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Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of State

Effective upon publication in the FEDERAL REGISTER, paragraph (a) (14) of § 6.302 is revoked.

(R.S. 1753; sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F.R. Doc. 59-1790; Filed, Feb. 27, 1959; 8:51 a.m.]

PART 20—RETENTION PREFERENCE REGULATIONS FOR USE IN REDUCTION IN FORCE

Definitions

Paragraph (a) of § 20.2 is amended as set out below.

§ 20.2 **Definitions.**

* * * * *

(a) "Reduction in force" is the release of an employee from a competitive level by means of separation from the rolls, furlough for more than thirty (30) days, reassignment involving displacement, or change to lower grade; when such actions are caused by lack of work, shortage of funds, reorganization, or exercise of regulatory reassignment or reemployment rights. Reduction in force does not apply to termination of temporary appointments, retirement, reassignment to vacancies, relegations in the Postal Field Service, or to adverse actions based upon deficiency in conduct or performance or upon other reasons which will promote the efficiency of the service.

(Secs. 11, 19, 58 Stat. 390, 391; 5 U.S.C. 860, 868)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F.R. Doc. 59-1791; Filed, Feb. 27, 1959; 8:51 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

[FHA Instruction 448.1]

PART 384—SPECIAL LIVESTOCK LOANS

Extension of Authority To Make Subsequent Special Livestock Loans

In order to extend, for two years, the authority to make subsequent Special Livestock loans pursuant to Public Law 85-516, § 384.5(b)(1), Code of Federal Regulations (20 F.R. 5519), is hereby revised to read as follows:

§ 384.5 **Loan purposes.**

* * * * *

(b) No Special Livestock loan may be approved:

(1) After July 13, 1957, except to borrowers indebted on that date for such loans. Loans to indebted borrowers may not be approved after July 14, 1961.

(R.S. 161; 5 U.S.C. 22)

Dated: February 24, 1959.

[SEAL] K. H. HANSEN,
Administrator,
Farmers Home Administration.

[F.R. Doc. 59-1789; Filed, Feb. 27, 1959; 8:51 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 159]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 914.459 **Navel Orange Regulation 159.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel

(Continued on p. 1495)

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FEDERAL REGISTER

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.

oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 26, 1959.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., March 1, 1959, and ending at 12:01 a.m., P.s.t., March 8, 1959, are hereby fixed as follows:

(i) District 1: 554,400 cartons;

(ii) District 2: 554,400 cartons;

(iii) District 3: Unlimited movement;

(iv) District 4: Unlimited movement.

(2) All navel oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: February 27, 1959.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-1840; Filed, Feb. 27, 1959; 11:51 a.m.]

[Valencia Orange Reg. 155]

PART 922—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 922.455 Valencia Orange Regulation 155.

(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 22, as amended (7 CFR Part 922), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said marketing agreement and order, as amended, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 19, 1959.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., March 1, 1959, and ending at 12:01 a.m., P.s.t., February 1, 1960, no handler shall handle any Valencia oranges, grown in District 3, which are of a size smaller than 2.32 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the oranges contained in any type container may measure smaller than 2.32 inches in diameter.

(2) As used in this section, "handle," "handler," and "District 3" shall have the same meaning as when used in the said marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: February 24, 1959.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-1751; Filed, Feb. 27, 1959; 8:46 a.m.]

[Orange Reg. 357]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.961 Orange Regulation 357.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become

effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. " Shipments of oranges, including Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on February 24, 1959; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, including Temple oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time of this section.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used in this section, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used in this section shall have the same meaning as is given to the respective term in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title; 22 F.R. 6676).

(2) During the period beginning at 12:01 a.m., e.s.t., March 2, 1959, and ending at 12:01 a.m., e.s.t., March 30, 1959, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, including Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Bronze;

(ii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than a size that will pack 288 oranges, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iii) Any oranges, except Temple oranges, grown in the production area, which are of a size larger than a size that will pack 126 oranges, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(iv) Any Temple oranges, grown in the production area, which are of a size smaller than 2$\frac{8}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of Temple oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title).

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: February 25, 1959.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-1784; Filed, Feb. 27, 1959; 8:50 a.m.]

[Grapefruit Reg. 304]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.962 Grapefruit Regulation 304.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions of this section effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on February 24, 1959, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time of this section.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used in this section have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used in this section, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); and the term "mature" shall have the same meaning as set forth in section 601.16 Florida Statutes, Chapters 26492 and 28090, known as the Florida Citrus Code of 1949, as supplemented by section 601.17 (Chapters 25149 and 28090) and also by section 601.18, as amended June 22, 1955 (Chapter 29760).

(2) During the period beginning at 12:01 a.m., e.s.t., March 2, 1959, and ending at 12:01 a.m., e.s.t., March 16, 1959, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which are not mature and do not grade at least U.S. No. 1 Bronze;

(ii) Any seeded grapefruit, grown in the production area, which are of a size smaller than 3$\frac{15}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than 3$\frac{9}{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: February 25, 1959.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-1785; Filed, Feb. 27, 1959; 8:50 a.m.]

[Lemon Reg. 780]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.887 Lemon Regulation 780.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based become available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 25, 1959.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., March 1, 1959, and ending at 12:01 a.m., P.s.t., March 8, 1959, are hereby fixed as follows:

(i) District 1: 18,600 cartons;

(ii) District 2: 144,150 cartons;

(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Dated: February 26, 1959.

[SEAL] FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 59-1828; Filed, Feb. 27, 1959; 9:15 a.m.]

PART 978—MILK IN NASHVILLE, TENNESSEE, MARKETING AREA

Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Nashville, Tennessee, marketing area (7 CFR Part 978), it is hereby found and determined that:

(a) The Class I differentials applicable for March and August 1959 do not tend to effectuate the declared policy of the Act.

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area. During recent months the market has been relatively short of producer receipts in relation to Class I sales and handlers have had to import supplemental supplies from other markets. In January 1959, the last month for which receipts and and utilization data are available, producer receipts were approximately 107 percent of Class I sales whereas during January 1958, producer receipts were approximately 121 percent of Class I sales.

(3) Unless such suspension action is taken there may be a further decline in the supply of milk in relation to Class I sales.

(4) The suspension has been requested by the majority of producers and by eight of the handlers supplying the market.

Therefore, good cause exists for making this order effective March 1, 1959.

It is therefore ordered, That the following language of § 978.51(a) of the order is hereby suspended effective March 1, 1959, for the period March 1, 1959, through March 31, 1959: "during the months of August through January; and plus $1.10 during all other months";

It is therefore further ordered, That the following language of § 978.51(a) of the order is hereby suspended effective August 1, 1959, for the period August 1, 1959, through August 31, 1959: "plus $1.40 during the months of August through January; and" and "during all other months".

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Issued at Washington, D.C., this 25th day of February 1959.

[SEAL] CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59-1794; Filed, Feb. 27, 1959; 8:52 a.m.]

PART 1018—MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

Order Amending Order

§ 1018.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southeastern Florida marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only

to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to butterfat and skim milk pursuant to § 1018.86.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than March 1, 1959.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued February 10, 1959, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued February 24, 1959. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective March 1, 1959, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Southeastern Florida marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1. Delete § 1018.7, *Producer,* and substitute the following:

§ 1018.7 Producer.

"Producer" means any person, except a producer-handler, who produces milk (as described in § 1018.63) in compliance with the inspection requirements of a duly constituted health authority for fluid consumption (as used in this subpart, compliance with inspection requirements shall include production of milk acceptable to agencies of the United States Government located in the marketing area for fluid consumption), which milk is received at pool plants (a) on eight or more days during the month, or (b) on less than eight days during the month if such person was a producer pursuant to paragraph (a) of this section during the preceding month.

2. In § 1018.11, delete paragraph (a) and the language preceding paragraph (a), and substitute the following:

§ 1018.11 Pool plant.

"Pool plant" means a plant described under paragraphs (a) or (b) of this section which is not a plant operated by a dairy farmer in his capacity as a producer-handler, is not determined to be a nonpool plant pursuant to § 1018.61, and is not a facility described in paragraph (c) of this section:

(a) A plant at which the total Class I milk during the month is equal to not less than 50 percent of the receipts at the plant during the month of milk from dairy farmers who meet the inspection requirements pursuant to § 1018.7 and other receipts in the form of milk products designated as Class I milk pursuant to § 1018.41(a) and from which an amount of Class I milk equal to not less than 20 percent of such receipts is disposed of during the month in the marketing area on routes;

§ 1018.41 [Amendment]

3. In § 1018.41, delete paragraphs (a)(1) and (b)(3) and substitute the following:

(1) Disposed of from the plant in the form of milk, skim milk, frozen milk (whole or concentrated), concentrated milk, reconstituted milk, chocolate milk, fortified skim milk up to the weight of an equal volume of unmodified skim milk, and fortified milk up to the weight of an equal volume of unmodified milk of the same butterfat test, and

* * * * *

(3) That portion of fortified milk or skim milk not classified as Class I milk pursuant to subparagraph (a)(1) of this section; and

§ 1018.50 [Amendment]

4. In § 1018.50, delete paragraphs (a), (b), (c), (d), and (e) and substitute the following:

(a) *Class I milk price.* The price for Class I milk shall be $7.00 per hundredweight for each of the months of the period beginning with March 1959 and through and ending with June 1960: *Provided,* That there shall be added to this price any amount by which the price pursuant to paragraph (b) of this section exceeds $7.25; and there shall be subtracted any amount by which the price pursuant to paragraph (b) of this section is less than $6.75;

(b) To the highest of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph, add $3.50:

(1) To the average of the basic field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the preceding month at the following plants or places for which prices have been reported to the market administrator or to the Department:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Bellesville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

add an amount computed by multiplying the Chicago butter price for the period ending with the 25th day of the preceding month by 0.625; and

(2) The price per hundredweight computed as follows: Multiply the Chicago butter price for the preceding month by 4.0, add 20 percent thereof, and add to such sum 7.5 times the amount by which the Chicago powder price for the preceding month exceeds 5 cents;

(c) The market administrator shall calculate a feed-wage price adjustment as set forth in subparagraphs (1), (2), (3), and (4) of this paragraph, but such adjustment shall not be effective in the period March 1959 through June 1960:

(1) Compute a feed price index by (i) dividing the latest per hundredweight monthly price for 20 percent dairy ration in the marketing area as reported by the Federal State Crop Reporting Service by 3.82 and multiplying by 50, (ii) dividing the latest per hundredweight monthly price for citrus pulp feed in the marketing area as reported by the Federal State Crop Reporting Service by 2.28 and multiplying by 50, and (iii) adding the results of the computations pursuant to sudvidisions (i) and (ii) of this subparagraph;

(2) Compute a weekly wage rate index by dividing the average of the weekly wage rate for industrial workers in Dade County for the latest month for which such data is available as furnished by the Florida Industrial Commission by 63.18 and multiply by 100;

(3) Multiply the result pursuant to subparagraph (1) of this paragraph by 0.6 and the result pursuant to subparagraph (2) of this paragraph by 0.4, add the resulting amounts, and round the total to the nearest whole number, which rounded total shall be known as the feed-wage index; and

(4) Calculate a feed-wage price adjustment as follows: From the feed-wage index subtract 100, and multiply the result by 4.5 cents, such result to be considered as a negative amount if the feed-wage index is less than 100;

(d) The market administrator shall calculate a supply-demand adjustment each month as set forth in subparagraphs (1), (2) and (3) of this paragraph, but such adjustment shall not be effective in the period March 1959 through June 1960:

(1) Calculate the percentage that producer milk in the second preceding month is of the Class I milk in pool plants in the same month, round the figure to the nearest full percent, and determine the amount by which this result is less than the minimum, or greater than the maximum, percentage indicated for the month in the table in subparagraph (4) of this paragraph;

(2) Calculate the percentage that producer milk in the third preceding month is of the Class I milk in pool plants in the same month, round the figure to the nearest full percent, and determine the amount by which this result is less than the minimum, or greater than the maximum, percentage indicated for the month in the table in subparagraph (4) of this paragraph;

(3) If both rounded percentages pursuant to subparagraphs (1) and (2) of this paragraph are less than the applicable minimums, add 4 cents times the smallest of the differences between the rounded percentages and the applicable minimums, and if both rounded percentages pursuant to subparagraphs (1) and (2) of this paragraph are more than the applicable maximums, subtract 4 cents times the smallest of the differences between the rounded percentages and the applicable maximums; and

(4)

Month in which milk received	Minimum percentage	Maximum percentage
August, September, October, November, December, January, February	106	111
March, April, May, June, July	110	115

(e) *Class II milk price.* The Class II price per hundredweight shall be computed by adding together the values of subparagraphs (1) and (2) of this paragraph:

(1) Multiply the Chicago butter price by 1.25, add 4 cents and multiply the result by 4; and

(2) Add 2.5 cents to the Chicago powder price and multiply the result by 8.5.

§ 1018.52 [Amendment]

5. In § 1018.52, delete paragraph (a) and substitute the following:

(a) Except as provided in paragraph (b) of this section, the rate of compensatory payment per hundredweight to be paid by pool plants, or by nonpool plants pursuant to § 1018.62(a) shall be calculated as follows: (1) If the milk is received from farmers at a pool plant or nonpool plant within the State of Florida, subtract the Class II price from the Class I price adjusted by the Class I location differential at such plant; or (2) if the milk is received from farmers at a pool plant or nonpool plant outside the State of Florida, subtract the price pursuant to § 1018.50(b)(2) from the Class I price adjusted for the Class I location differential at such plant;.

6. Delete § 1018.61 and substitute the following:

§ 1018.61 Plants where other Federal orders may apply.

Upon determination by the Secretary pursuant to this section, any plant specified in paragraphs (a), (b) and (c) of this section shall be a nonpool plant, except that the operator of such plant shall, with respect to the total receipts and disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator:

(a) Any plant meeting the requirements of a pool plant pursuant to § 1018.11(b) but not pursuant to § 1018.11(a) which, if it were not a pool plant under this part, would be fully subject to the classification and pooling provisions of another order issued pursuant to the Act;

(b) Any plant meeting the requirements of a pool plant pursuant to § 1018.11(b) but not pursuant to § 1018.11(a) at which all receipts of skim milk and butterfat during the month would be priced and pooled under the terms of another order(s) issued pursuant to the Act if such plant were not a pool plant under this order: *Provided,* That such pricing and pooling results in all skim milk and butterfat disposed of from the plant in the form of milk and skim milk during the month being Class I milk under the terms of another order(s) issued pursuant to the Act; and

(c) Any plant which does not dispose of a greater volume of Class I milk on routes in the southeastern Florida marketing area than in the marketing area regulated pursuant to such other order.

7. Under the centerhead "Application of Provisions", insert a new § 1018.63 as follows:

§ 1018.63 Person producing milk.

The person who produces milk shall be considered to be the person who is responsible for the milk production enterprise on a continuing basis as to management and risk.

§ 1018.70 [Amendment]

8. Delete § 1018.70(b) and substitute the following:

(b) Add an amount computed by multiplying the pounds of any overage deducted from either class pursuant to § 1018.45(a)(7) and (b) by the applicable class price adjusted by the butterfat differential specified in § 1018.73;.

§ 1018.86 [Amendment]

9. In § 1018.86, delete paragraph (c) and the proviso, and insert new paragraphs (c), (d) and (e) as follows:

(c) Class I milk disposed of on routes in the marketing area from a nonpool plant for which the obligation to the producer-settlement fund is determined pursuant to § 1018.62(a);

(d) Receipts of milk from dairy farmers, or total Class I milk, whichever is greater, at a nonpool plant which elects to have its obligation computed pursuant to § 1018.62(b); and

(e) With respect to payments pursuant to paragraphs (a), (b), (c), and (d) of this section, if a handler uses more than one accounting period in a month, the rate of payment per hundredweight for such handler shall be the rate for monthly accounting periods multiplied by the number of accounting periods in the month, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting periods.

§ 1018.45 [Amendment]

10. In § 1018.45(a), delete subparagraphs (2) and (3) and substitute the following:

(2) Subtract from the pounds of skim milk remaining in Class II the pounds of skim milk in other source milk not to be subtracted pursuant to subparagraph (3) of this section: *Provided,* That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(3) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk which is priced and pooled as Class I milk under another order except any quantities from a nonpool plant equal to or less than the skim milk in milk or skim milk disposed of from such nonpool plant and not priced and pooled under such other order: *Provided,* That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;.

(Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c)

Issued at Washington, D.C., this 25th day of February 1959, to be effective on and after the 1st day of March 1959.

[SEAL] CLARENCE L. MILLER, *Assistant Secretary.*

[F.R. Doc. 59-1795; Filed, Feb. 27, 1959; 8:52 a.m.]

PART 1019—MILK IN CONNECTICUT MARKETING AREA

Order Regulating Handling of Milk

Sec.

REPORTS, RECORDS AND FACILITIES

MINIMUM PRICES

APPLICATION OF PROVISIONS

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

PAYMENTS

MISCELLANEOUS PROVISIONS

AUTHORITY: §§ 1019.0 to 1019.85 issued under sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 1019.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Connecticut marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk and its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment, as a pro rata share of such expense, of 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, as follows: (i) By each pool handler with respect to (*a*) receipts of producer milk including such handler's own production, (*b*) receipts of exempt milk under § 1019.4(g) (1), and (*c*) receipts of other source milk assigned to Class I milk and not subject to an expense of administration assessment under another Federal order, and (ii) by each nonpool handler with respect to other source milk disposed of in the marketing area on routes, except other source milk subject to an expense of administration assessment under another Federal order.

(b) *Additional findings.* It is necessary in the public interest to make this order partially effective not later than March 1, 1959, and fully effective not later than April 1, 1959.

The provisions of the said order are known to handlers. The recommended decision of the Administrator of the Agricultural Marketing Service was issued December 17, 1958, and the decision of the Assistant Secretary containing all the provisions of this order was issued February 9, 1959. This order will constitute the original imposition of a regulatory program in this market and it is necessary that the provisions other than those relating to prices and payments to producers be placed in effect prior to the effective date of such pricing and payment provisions in order that handlers may have opportunity to make necessary adjustments in their operational and accounting procedures to conform to all provisions of the order. In view of the foregoing, it is hereby found and determined that good cause exists for making this order partially effective March 1, 1959, and fully effective April 1, 1959, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of this order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Connecticut marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

DEFINITIONS

§ 1019.1 General definitions.

(a) "Act" means Public Act No. 10, 73d Congress, as amended, and re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

(b) "Connecticut marketing area", hereinafter referred to as the "marketing area" means all of the territory included within the boundary lines of the State of Connecticut, together with all piers, docks and wharves connected therewith and craft moored thereat, and including all territory within such boundaries which is occupied by Government (municipal, State or Federal) installations, institutions or other establishments.

(c) "Route" means any delivery to retail or wholesale outlets (including any disposition by a vendor, from a plant store, or to a vending machine) of fluid milk products classified as Class I milk pursuant to § 1019.21(a) other than to a plant.

§ 1019.2 Definitions of persons.

(a) "Person" means any individual, partnership, corporation, association, or any other business unit.

(b) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

(c) "Dairy farmer" means any person with respect to milk (but not as a packaged fluid milk product) of his own production delivered to a plant.

(d) "Dealer" means any person who operates a plant at which he engages in the business of receiving fluid milk products for resale or manufacture into milk products, whether or not he disposes of any fluid milk products in the marketing area during the month.

(e) "Producer" means any dairy farmer (except a producer-handler or a dairy farmer who is a producer under another Federal order) who produces milk which is received during the month at a pool plant, or is diverted by a pool handler from a pool plant to a nonpool plant in accordance with subparagraphs (1), (2), and (3) of this paragraph, if such pool handler, in filing the report required pursuant to § 1019.30, reports

such milk as received from a producer at the location of the nonpool plant to which it is diverted;

(1) To a nonpool plant(s) during any month from July through November on not more than 12 days (6 days in the case of every-other-day delivery) during such month; or

(2) To a nonpool plant(s) during any of the months of December through June.

(3) Any dairy farmer whose milk is diverted during any month from July through November, inclusive, on more than the number of days specified in subparagraph (1) of this paragraph, shall not be considered to qualify under this paragraph with respect to any of his deliveries of milk during such month.

(f) "Association of producers" means any cooperative marketing association which the Secretary determines to be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged in making collective sales or marketing of milk or its products for the producers thereof.

(g) "Handler" means (1) any person who during the month operates a pool plant, or any other plant from which fluid milk products are disposed of, directly or indirectly, in the marketing area on routes, or (2) any association of producers with respect to the milk of any producer which it causes to be diverted to a nonpool plant for the account of such association under the conditions of § 1019.2(e).

(h) "Pool handler" means (1) any handler in his capacity as the operator of a pool plant, or (2) any association of producers with respect to milk diverted under the conditions of § 1019.2(e).

(i) "Producer-handler" means any person who is both a dairy farmer and a handler who processes milk from his own production, distributing all or a portion of such milk in the marketing area on routes, and who has no other source of supply for fluid milk products except fluid milk products from pool plants: *Provided,* That both (1) the maintenance, care and management of the dairy animals and other resources necessary to produce the milk, and (2) the processing, packaging and distribution of the milk, are the personal enterprise, and the personal risk, of such person: *And provided further,* That a State owned and operated institution or establishment meeting this definition which processes and packages milk produced by another such institution or establishment may receive such milk without having it regarded as a source of supply for fluid milk products.

§ 1019.3 Definitions of plants.

(a) "Plant" means the land and buildings, whether owned or operated by one or more persons, at which are maintained stationary holding tanks for milk, facilities and other equipment for the receiving, handling or processing of milk or milk products, constituting a single operating unit or establishment: *Provided,* That this definition shall not include any building, premises, equipment or facilities used primarily (1) to hold or store packaged fluid milk products or other milk products in finished form in transit on routes, or (2) to transfer milk from one road vehicle to another.

(b) "Receiving plant" means any plant at which are maintained facilities and equipment for the washing and sanitizing of milk cans or milk tank trucks and at which milk is received under either of the following conditions: (1) Milk moved from dairy farmers' farms in cans is accepted, weighed or measured, sampled and cooled, or (2) milk moved from dairy farmers' farms in tank trucks is accepted and transferred to stationary holding or processing facilities.

(c) "Pool plant": Subject to § 1019.47, "pool plant" means:

(1) any receiving plant, other than the plant of a producer-handler, from which at least 10 percent of its total receipts of milk directly from dairy farmers is disposed of during the month within the marketing area on routes and not less than 50 percent of such plant's total receipts of fluid milk products is disposed of during the month as Class I milk either inside or outside the marketing area;

(2) Except as provided in subparagraph (3) of this paragraph, any receiving plant, other than a plant meeting the conditions of subparagraph (1) of this paragraph, from which not less than 30 percent of its receipts of milk from dairy farmers is shipped during the month in bulk to any of the plants, institutions or facilities described in subdivisions (i), (ii) and (iii) of this subparagraph: *Provided,* That any plant which qualified as a pool plant pursuant to this subparagraph during each of the preceding months of July through November shall be a pool plant during the entire period of December through June unless the handler's written request for nonpool status for such seven-month period is received by the market administrator prior to the 10th day of December.

(i) A plant meeting the conditions of subparagraph (1) of this paragraph,

(ii) Any other plant located within the marketing area or in a town of Massachusetts or Rhode Island which borders on the State boundary of Connecticut from which at least 10 percent of such plant's total receipts of fluid milk products is disposed of in the marketing area on a route(s), or

(iii) A governmentally owned and operated institution or facility located within the marketing area which disposes of Class I milk solely for use on its own premises; or

(3) For each month from the effective date of this order until July 1, 1959, any receiving plant, other than a plant meeting the conditions of subparagraph (1) of this paragraph, (i) from which not less than 10 percent of its receipts of milk from dairy farmers is shipped during such month in bulk form to any of the three types of plants or establishments described in subdivisions (i), (ii), and (iii) of subparagraph (2) of this paragraph, or (ii) for which the handler furnishes proof that such plant met during each month of the period July through November 1958, inclusive, the shipping requirement described under subparagraph (2) of this paragraph.

§ 1019.4 Definitions of milk and milk products.

(a) "Milk" means the commodity received from a dairy farmer at a plant as cow's milk. The term also includes milk so received which later has its butterfat content adjusted to at least one-half of one percent but less than 10 percent; frozen milk; reconstituted milk; and 50 percent of the quantity, by weight, of "half and half."

(b) "Cream" means that portion of milk, containing not less than 12 percent of butterfat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes sour cream; frozen cream; milk and cream mixtures containing 12 percent or more of butterfat; and 50 percent of the quantity, by weight, of "half and half."

(c) "Half and half" means any fluid milk product, except concentrated milk, the butterfat content of which has been adjusted to at least 10 percent but less than 12 percent.

(d) "Concentrated milk" means the concentrated, unsterilized milk product resembling plain condensed milk which is disposed of in fluid form for human consumption.

(e) "Fluid milk product" means milk, flavored milk, skim milk, flavored skim milk, cultured skim milk, buttermilk, and concentrated milk in fluid form, or any mixture in fluid form of milk, skim milk and cream containing less than 12 percent of butterfat (except eggnog, yogurt, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skim milk (plain or sweetened), and sterilized products in hermetically sealed containers).

(f) "Producer milk" means only that skim milk and butterfat contained in milk which during the month was (1) received at a pool plant directly from producers, or (2) diverted from a pool plant in accordance with the conditions set forth in § 1019.2(e).

(g) "Exempt milk" means all skim milk and butterfat: (1) Received at a pool plant as milk, in bulk, from a nonpool plant to be processed and packaged, and for which an equivalent quantity of skim milk and butterfat in the form of packaged fluid milk products is returned to the operator of the nonpool plant during the same month if such receipt and return occurs during an interval in which the facilities of the nonpool plant at which the milk is usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the dealer's control; (2) received at a pool plant in the form of packaged fluid milk products from a nonpool plant in return for which an equivalent quantity of skim milk and butterfat in the form of bulk milk is moved from a pool plant for processing and packaging during the same month; or (3) in milk produced by a State owned and operated institution, which milk is processed and packaged at a plant operated by a similar

institution if such milk is used only to serve residents of either institution on the premises thereof.

(h) "Other source milk" means all skim milk and butterfat contained in or represented by (1) receipts (including any Class II milk product produced in the handler's plant during a prior month), in a form other than fluid milk products, which are reprocessed, converted, or combined into another product during the month, and (2) receipts (other than exempt milk) in the form of fluid milk products from any source other than producers or a pool plant(s).

(i) "Packaged fluid milk product" means any fluid milk product which has been placed in a container for disposition on routes and has not been removed from such container prior to such disposition.

MARKET ADMINISTRATOR

§ 1019.10 Designation of market administrator.

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 1019.11 Powers of market administrator.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations of its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1019.12 Duties of market administrator.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

(a) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to exercise his powers and perform his duties;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 1019.70; (1) The cost of his bond and the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 1019.69, necessarily incurred by him in the maintainence and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any pool handler who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1019.30 and 1019.31 (a) (3), or payments pursuant to §§ 1019.60 to 1019.70;

(g) Submit his books and records to examination by the Secretary, and furnish such information and reports as the Secretary may request;

(h) Verify all reports and payments of each handler by audit, as necessary, of handlers' records, and if made available to the market administrator, of the records of any other person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(i) Prepare and disseminate for the benefit of producers, consumers, and handlers, such general statistics and information as reflect the operation of this part and which do not reveal confidential information:

(j) On or before the date specified, determine and publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(1) The 26th day of each month, the Class I price computed pursuant to § 1019.40(a) for the following month;

(2) The 5th day of each month the Class II price computed pursuant to § 1019.40(b) and the butterfat differential computed pursuant to § 1019.61 both for the preceding month;

(3) The 14th day of each month, the basic uniform price computed pursuant to § 1019.51 and the zone uniform prices resulting from the adjustment of the basic uniform price by the zone price differentials pursuant to § 1019.42, both for the preceding month.

(k) Give each of the producers delivering to a plant, as reported by the handler, prompt written notice of his actual or potential loss of producer status for the first month in which the plant's status has changed or is changing to that of a nonpool plant: *Provided,* That in the case of producers for whom an association of producers is collecting payments pursuant to § 1019.60(b), such notice shall be furnished such association of producers.

CLASSIFICATION

§ 1019.20 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to § 1019.30 shall be classified by the market administrator pursuant to the provisions of §§ 1019.21 to 1019.24.

§ 1019.21 Classes of utilization.

Subject to the conditions set forth in §§ 1019.22, 1019.23, and 1019.24 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce concentrated milk and reconstituted or fortified skim milk) and butterfat in milk: (1) Sold, distributed or disposed of in the form of fluid milk products (except as provided in paragraph (b) of this section) and (2) not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product except a fluid milk product; (2) disposed of for livestock feed or to bakeries, soup factories, and similar establishments; (3) contained in milk, skim milk, flavored milk, flavored milk drink or buttermilk dumped, if the conditions of § 1019.31(b) are met by the handler; (4) contained in inventory of fluid milk products on hand at the end of the month; (5) in shrinkage of producer milk (except that diverted pursuant to § 1019.2(e)) not to exceed one-half of one percent of the total pounds of skim milk and butterfat, respectively, received directly from producers, plus 1½ percent of the total pounds of skim milk and butterfat in bulk fluid milk, skim milk and cream received directly from producers and by transfer from a pool plant which were not disposed of in bulk form to another plant; and (6) in shrinkage of other source milk.

§ 1019.22 Transfers and diversions of fluid milk products.

Skim milk and butterfat moved in the form of any fluid milk product from a pool plant to another plant shall be classified as follows:

(a) (1) As Class I milk if transferred as a packaged fluid milk product from a pool plant to another pool plant.

(2) As Class I milk if transferred in bulk from a pool plant to another pool plant and a Class II use is not indicated in writing to the market administrator by the operators of both plants on or before the 10th day after the end of the month within which such transfer was made, except that (i) in no event shall the amount classified in either class exceed the total use in such class at the transferee-plant, and (ii) in the case of transfers from a plant subject to a zone price differential, the amount classified as Class I milk shall not exceed that on which the zone price differential is applicable pursuant to the proviso of § 1019.42(b).

(b) As Class I milk if transferred in bulk to the plant of a producer-handler.

(c) (1) Except as provided in subparagraph (2) of this paragraph, in the class in which assigned under the other order if transferred or diverted in bulk to a pool plant as defined under another Federal order.

(2) In Class II milk to the extent it is not assigned to Class I–B (i) if diverted or transferred in bulk, or (ii) if transferred as a packaged fluid milk product containing at least 3 percent butterfat, to a pool plant as defined in Federal Order No. 27 or to any plant from which a greater aggregate quantity of fluid milk products is disposed of on routes in the New York-New Jersey marketing area under Order No. 27 than is disposed of in the Connecticut marketing area.

(d) Except as provided in paragraphs (b) and (c) of this section, as Class I milk if transferred or diverted in bulk to a nonpool plant, unless Class II utilization is established: *Provided,* That (1) the amount of such skim milk and butterfat assigned to Class I milk shall not be less than the disposition from the transferee-plant of skim milk and butterfat, respectively, in the form of fluid milk products in the marketing area on routes, and (2) the amount of such skim milk and butterfat assigned to Class II milk in no event shall be greater than that volume of skim milk and butterfat, respectively, received in the form of fluid milk products from fully regulated plants under any Federal order, which is in excess of the Class I utilization at such transferee-plant,

(e) By applying the provisions of paragraphs (b) to (d) of this section, whichever is applicable, if transferred or diverted in bulk to a nonpool plant, except the plant of a producer-handler or a fully regulated plant under another Federal order, and thence to another nonpool plant: *Provided,* That if the other plant to which such movement is made is located outside the New England States and New York State, classification shall be as Class I milk.

§ 1019.23 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk and butterfat should be classified as Class II milk.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses the original classification was incorrect.

§ 1019.24 Computation and allocation of the quantity of producer milk in each class.

For each handler the market administrator shall:

(a) Correct for mathematical and for other obvious errors the monthly report submitted by such handler and compute the total pounds of skim milk and butterfat in producer milk in each class: *Provided,* That when nonfat milk solids derived from nonfat dry milk, condensed skim milk, or any other product condensed from milk or skim milk, are utilized by such handler, the total pounds of skim milk computed shall reflect a volume equivalent to the skim milk used to produce such nonfat milk solids; and

(b) Allocate skim milk in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk, the pounds of skim milk shrinkage allowed pursuant to § 1019.21(b)(5);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk, received during the month in a form other than fluid milk products;

(3) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk the pounds of skim milk received during the month in other source milk in the form of fluid milk products from plants other than one of the types described under subparagraph (5) of this paragraph;

(4) During the months of July through November, subtract from the pounds of skim milk in Class II milk an amount equal to the remaining volume of skim milk in Class II milk or the product obtained by multiplying by 0.15 the pounds of skim milk in receipts of producer milk, whichever is less;

(5) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk, the pounds of skim milk in bulk receipts of fluid milk products from (i) any plant at which milk is subject to the class price provisions of another Federal order, and (ii) any plant which receives its entire supply of fluid milk products from a plant under another Federal order;

(6) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk received during the month as exempt milk;

(7) Subtract from the remaining pounds of skim milk in Class I milk the pounds of skim milk in packaged fluid milk products received (i) from plant sources as described in subparagraph (5) of this paragraph, and (ii) from any pool plant and any plant which receives its entire supply from a pool plant;

(8) Assign to Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(9) Subtract from the remaining pounds of skim milk in each class, respectively, the skim milk received in bulk from other pool plants and assigned to such class;

(10) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month: *Provided,* That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II the balance shall be subtracted from the pounds of skim milk in Class I milk;

(11) Assign to Class II milk the amount subtracted pursuant to subparagraph (1) of this paragraph; and

(12) If the remaining pounds of skim milk in both classes exceed the total pounds of skim milk in the producer milk of such handler, subtract such excess (hereinafter referred to as "overage") from the remaining pounds of skim milk in each class in sequence beginning with Class I milk.

(c) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (b) of this section; and

(d) Add the pounds of skim milk and butterfat allocated to producer milk in each class, pursuant to paragraphs (b) and (c) of this section.

§ 1019.25 Shrinkage.

In computing shrinkage for the purposes of § 1019.21(b) (5) and (6), the market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in producer milk and in other source milk in the following manner:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler, and

(b) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section, among the pounds of producer milk, other source milk, and receipts from other handlers.

REPORTS, RECORDS AND FACILITIES

§ 1019.30 Reports of receipts and utilization.

(a) On or before the 8th day after the end of each month, or not later than the 10th day after the end of each month if the report required by this paragraph is delivered in person to the office of the market administrator, each pool handler with respect to each of his pool plants and with respect to milk diverted under the conditions of § 1019.2(e), shall report to the market administrator, in the detail and on forms prescribed by the market administrator for such month:

(1) The respective quantities of skim milk and butterfat contained in:

(i) The receipts of producer milk (including such handler's own farm production);

(ii) The receipts of fluid milk products from other pool plants;

(iii) The receipts of exempt milk;

(iv) The receipts of other source milk;

(v) Inventories of fluid milk products on hand at the beginning and end of the month;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to subparagraph (1) of this paragraph.

(b) Except as provided in paragraph (a) of this section, each handler who operates a nonpool plant shall report to the market administrator, on or before the appropriate date referred to in paragraph (a) of this section, his total receipts, his utilization of milk and milk products, his total disposition of Class I milk, including as a separate figure the quantity disposed of within the marketing area on routes, and such other information with respect to all receipts and utilization as the market administrator may prescribe.

§ 1019.31 Other reports.

(a) Each pool handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) Within 20 days after a producer moves from one farm to another, starts or resumes deliveries to any of a handler's pool plants, or starts delivering his milk to the handler's plant by tank truck, the handler shall file with the market administrator a report stating the producer's name and post office address, the date on which the change took place, and the farm and plant locations involved. The report shall also state the plant to which the producer had been delivering prior to starting or resuming deliveries;

(2) Within 15 days after the 5th consecutive day on which a producer has failed to deliver to any of a handler's pool plants, the handler shall file with the market administrator a report stat-

ing the producer's name and post office address, the date on which the last delivery was made, and the farm and plant locations involved. The report shall also state the reason for the producer's failure to continue deliveries;

(3) Subsequent to the 22d day after the end of the month, and within 5 days after the market administrator's request, his producer payroll for such month, which shall show for each producer:

(i) The daily and total pounds of milk delivered with the average butterfat test thereof; and

(ii) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

(b) (1) Each handler dumping pursuant to § 1019.21(b) (3) shall mail or deliver to the market administrator within 48 hours following each dumping not witnessed by the market administrator or his agent, a report in writing, as prescribed by the market administrator, showing the date on which the dumping was made and the quantity dumped, such report to be signed by both the person who performed the dumping operation and the person authorized to sign reports for the handler made pursuant to § 1019.30 (if the latter person is not available to sign the report within the 48-hour period, the signature of the plant manager or plant superintendent shall be substituted on the report).

(2) Each handler dumping also shall give the market administrator, at the request of and in accordance with instructions issued by the market administrator, advance notice of intention to make such disposition and of the quantities involved.

§ 1019.32 Notices to producers.

(a) Each pool handler shall furnish each producer from whom he receives milk with information regarding the weights, butterfat tests and payments with respect to the producer's milk as follows: *Provided,* That in the case of producers for whom the handler makes payment to a cooperative association pursuant to § 1019.60(b), the information specified in paragraph (b) (1), (2) and (5) of this section shall be furnished by the handler to such cooperative association on or before the 14th day after the end of the month for which such payment is due.

(b) In making the payments to producers prescribed in § 1019.60(a), each pool handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of § 1019.60 (a);

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

§ 1019.33 Records, facilities and verification.

(a) Each handler shall maintain detailed and summary records showing all receipts movements, and disposition of milk and milk products during each month, and the quantities of milk and milk products on hand at the end of the month.

(b) For the purpose of ascertaining the correctness of any report made to the market administrator as required by this part or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, each handler shall permit the market administrator or his agent, during the usual hours of business, to:

(1) Verify the information contained in reports submitted in accordance with this part;

(2) Weigh, sample, and test milk and milk products; and

(3) Make such examination of records, operations, equipment, and facilities as the market administrator deems necessary for the purpose specified in this section.

§ 1019.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

MINIMUM PRICES

§ 1019.40 Class prices.

Subject to the provisions of § 1019.42 each pool handler shall pay, at the time and in the manner set forth in § 1019.60, not less than the following prices per hundredweight for the respective quantities of milk in each class computed for him pursuant to § 1019.24:

(a) *Class I price.* The Class I price for the month shall be the New England basic Class I price per hundredweight computed pursuant to § 1019.41 plus 54 cents.

(b) *Class II price.* Except as provided in paragraph (c) of this section, the Class II price per hundredweight shall be computed for each month as follows:

(1) Subtract 52.5 cents from the weighted average price per 40-quart can of 40 percent bottling quality cream f.o.b. Boston, as reported by the United States Department of Agriculture for the period between the 15th day of the month for which the price is computed and the 16th day of the preceding month, inclusive, divide the remainder by 33, multiply by 0.98, and multiply the result by 3.7;

(2) Multiply by 7.85 the simple average of the latest available prices per pound of roller process and spray process nonfat dry milk for human consumption, in carlots, f.o.b. Chicago area manufacturing plants, as reported and published by the United States Department of Agriculture;

(3) Add the results obtained in subparagraphs (1) and (2) of this paragraph, and from the sum subtract the amount shown below for the applicable month:

Month:	*Amount*
January and February	$0.612
March and April	.732
May and June	.792
July	.732
August and September	.672
October, November and December	.612

(c) For any month in which no cream price, as described in paragraph (b) (1) of this section, is reported, and for any month in which the amount determined pursuant to this paragraph is greater than the amount computed pursuant to paragraph (b) (3) of this section, the Class II price per hundredweight shall be computed as follows:

(1) Adjust the average price for milk for manufacturing purposes, f.o.b. plants United States, as reported on a preliminary basis by the United States Department of Agriculture for such month, by subtracting for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or adding for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator by multiplying by 0.125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market, as reported by the United States Department of Agriculture for the period between the 15th day of the month for which the price is computed and the 16th day of the preceding month, inclusive.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month:	*Amount*
January	+$0.188
February	+ 0.178
March	+ 0.008
April	− 0.032
May	− 0.062
June	− 0.052
July	+ 0.138
August	+ 0.228
September	+ 0.198
October	+ 0.218
November	+ 0.228
December	+ 0 228

§ 1019.41 Computation of New England basic Class I price.

The New England basic Class I price per hundredweight of milk containing 3.7 percent butterfat shall be determined for each month pursuant to this section. The latest reported figures available to the market administrator on the 25th day of the preceding month shall be used in making the following computations, except that if the 25th day of such preceding month falls on a Sunday or legal holiday the latest figures available on the next succeeding work day shall be used.

(a) Compute the economic index as follows:

(1) Divide by 1.143 the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, with the years 1947–49 as the base period;

(2) Using the data on per capita personal income, by States and regions, as published by the United States Department of Commerce, establish a "New England adjustment percentage" by computing the current percentage relationship of New England per capita personal income to per capita personal income in continental United States. Multiply by the New England adjustment percentage the quarterly figure showing the current annual rate of per capita disposable personal income in the United States as released by the United States Department of Commerce or the Council of Economic Advisers to the President. Divide the result by 15.34 to determine an index of per capita disposable personal income in New England;

(3) Multiply by 20 the average price per 100 pounds paid by farmers in the New England region for all mixed dairy feed of less than 29 percent protein content, as reported by the United States Department of Agriculture for the month, and divide the result by 0.884 to determine the dairy ration index. Compute the average, weighted by the indicated factors, of the following farm wage rates reported for the New England region by the United States Department of Agriculture: Rate per month with board and room, 1; rate per month with house, 1; rate per week with board or room, 4.33; rate per week without board and room, 4.33; and the rate per day without board or room, 26. Divide the average wage rate so computed by 1.458 to determine the wage rate index. Multiply the dairy ration index by 0.6 and the wage rate index by 0.4 and combine the two results to determine the grain-labor cost index; and

(4) Divide by 3 the sum of the wholesale price index, the index of per capita disposable income in New England, and the grain-labor cost index determined pursuant to this paragraph. The result shall be known as the economic index.

(b) The seasonal adjustment factor shall be the factor listed below for the month for which price is being computed.

Month:	*Seasonal adjustment factor*
January and February	1.04
March	1.00
April	.92
May and June	.88
July	.96
August	1.00
September	1.04
October, November and December	1.08

(c) Compute a New England basic Class I price index by multiplying the economic index determined pursuant to paragraph (a) of this section by the applicable seasonal adjustment factor pursuant to paragraph (b) of this section and multiplying the result by the supply-demand adjustment factor determined by the market administrator of Order No. 4 regulating the handling of milk in the Greater Boston marketing area pursuant to § 904.48(b) of that order.

(d) The New England basic Class I price shall be as shown in the following table:

New England basic Class I price index ×$0.05592		New England basic Class I price
At least—	But less than—	
$4.20 [1]	$4.42	$4.31
$4.42	4.64	4.53
$4.64	4.86	4.75
$4.86	5.08	4.97
$5.08	5.30	5.19
$5.30	5.52	5.41
$5.52	5.74	5.63
$5.74	5.96	5.85
$5.96	6.18	6.07
$6.18	[1] 6.40	6.29

[1] If the New England basic Class I price index times $0.05592 is less than $4.20 or is $6.40 or more, the New England basic Class I price shall be determined by extending the table at the indicated rate of extension.

(e) Notwithstanding the provisions of paragraphs (a) to (d) of this section, the New England basic Class I price for November or December of each year shall not be lower than such price for the immediately preceding month.

§ 1019.42 Zone price differentials.

The prices of Class I milk and Class II milk (§ 1019.40) and the basic uniform price to producers (§ 1019.51) at each plant located outside Connecticut or a town of Massachusetts or Rhode Island which borders on the State boundary of Connecticut and more than 50 miles from Hartford, Connecticut, shall be subject to zone price differentials for such plant computed as follows:

(a) The zone location of each plant shall be determined by the market administrator and shall be based upon highway mileage distance as determined by use of the appropriate State maps contained in Mileage Guide No. 6, and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Washington, D.C. The distance shall be the lowest highway mileage between Hartford, Connecticut, and the named point on the map which is nearest to the plant, over roads designated thereon as paved, first-class, all-weather roads. In the event that the named point is not located on a through first-class road, such other roads shall be used to reach a through first-class road as will result in the lowest highway mileage to Hartford, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a through first-class road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the State in which the road is located.

(b) The zone price differentials for each plant shall be those applicable to its zone location as shown in the following table: *Provided*, That for the purpose of applying such zone price differentials, transfers of fluid milk products in bulk between pool plants shall first be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 1019.24(b) (1) to (8), and the comparable steps in § 1019.24(c), for such plant; such assignment to the transferor-plant to be made in sequence according to the zone price differential applicable at each plant, beginning with the plant most distant from Hartford.

PLANT ZONE PRICE DIFFERENTIALS

A	B	C	D
Distance to Hartford	Zone	Class I and uniform price differentials (cents per hundredweight)	Class II price differentials (cents per hundredweight)
50 or less	1–5	0.0	0.0
51 to 60	6	−33.0	−3.0
61 to 70	7	−34.4	−3.0
71 to 80	8	−35.8	−3.0
81 to 90	9	−37.2	−3.0
91 to 100	10	−38.6	−3.0
101 to 110	11	−40.0	−4.5
111 to 120	12	−41.4	−4.5
121 to 130	13	−42.8	−4.5
131 to 140	14	−44.2	−4.5
141 to 150	15	−45.6	−4.5
151 to 160	16	−47.0	−6.0
161 to 170	17	−48.4	−6.0
171 to 180	18	−49.8	−6.0
181 to 190	19	−51.2	−6.0
191 to 200	20	−52.6	−6.0
201 to 210	21	−54.0	−7.0
211 to 220	22	−55.4	−7.0
221 to 230	23	−56.8	−7.0
231 to 240	24	−58.2	−7.0
241 to 250	25	−59.6	−7.0
251 and over [1]	26 and over		−8.0

[1] Class I and uniform price differentials applicable to plants located more than 250 miles from Hartford shall be obtained by extending the table at the rate of 1.4 cents for each additional 10 miles, except that in no event shall the Class I or uniform price at any zone be less than the Class II price for the month for plants in such zone.

§ 1019.43 Use of equivalent factors in formulas.

If for any reason a price, index, or wage rate specified by this part for use in computing class prices and for other purposes is not reported or published in the manner described in this order, the market administrator shall use a price, index, or wage rate determined by the Secretary to be equivalent to or comparable with the factor which is specified.

APPLICATION OF PROVISIONS

§ 1019.45 Producer-handlers.

Sections 1019.40 to 1019.43, 1019.46, 1019.50 and 1019.51, and 1019.60 to 1019.70 shall not apply to a producer handler.

§ 1019.46 Payments on other source milk.

Handlers shall make payments with respect to other source milk computed as follows:

(a) Each pool handler who received other source milk which is allocated to Class I pursuant to § 1019.24 (b) (2) and (c) shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price applicable at Hartford, Connecticut, as computed pursuant to § 1019.40.

(b) Each pool handler who received other source milk which is allocated to Class I milk pursuant to § 1019.24 (b) (3) and (c) shall make payment on the quantity so allocated, as follows: At the difference between the Class I and Class II price computed pursuant to § 1019.40 for the zone location of the nonpool plant.

(c) Each pool handler who receives:

(1) Other source milk (i) in the form of skim milk (bulk or packaged) from a New York-New Jersey Federal Order No. 27 pool plant which milk was classified and priced as other than Class I–A or I–B milk pursuant to such order, or (ii) as unpriced Class I–B milk (as defined in Order No. 27) which is allocated to Class I milk pursuant to § 1019.24(b) (5), shall make payment on the volume thereof at the difference between the Class I price pursuant to § 1019.40(a) and the Class II price pursuant to § 1019.40(b) for the zone location of the plant from which such other source milk was received, or

(2) Other source milk not described in subparagraph (1) of this paragraph which is allocated to Class I milk pursuant to § 1019.24(b) (5) and is not subject to pricing as Class I milk (Class I–A or I–B milk under Order No. 27) under the terms of the other Federal order, shall make payment on the volume thereof so allocated at the rate specified in subparagraph (1) of this paragraph.

(d) Each handler operating a nonpool plant who disposes of fluid milk products in the marketing area on routes from such plant shall make payment at the difference between the Class I price and the Class II price computed pursuant to § 1019.40 for the zone location of his plant on the amount of such disposition which is in excess of his receipts of fluid milk products classified and priced as Class I milk under this or any other Federal order.

§ 1019.47 Plants with milk in more than one Federal order market.

Except as provided in § 1019.46(c), milk received at a plant otherwise eligible as a pool plant under § 1019.3(c) shall be exempt from the provisions of this part if the conditions of paragraph (a), (b) or (c) of this section are met: *Provided,* That the handler of such milk shall make reports to the market administrator with respect to his total receipts and utilization of skim milk and butterfat at such times and in such manner as the market administrator may require and allow verification of such reports by the market administrator in accordance with § 1019.12(h):

(a) The Secretary determines that (1) during the month a greater quantity of fluid milk products is disposed of from such plant to another marketing area as defined in another Federal order (either on a route(s) or through a plant(s) than is disposed of during the month from such plant in the Connecticut marketing area (either on a route(s) or through plant(s)), and (2) such fluid milk products would be subject to the class price and producer payment provisions of the other Federal order upon being made exempt from this part.

(b) The plant is regulated for the month as a pool plant under any of the following: Federal Order No. 4 for the Boston, Massachusetts, marketing area, Federal Order No. 96 for the Springfield, Massachusetts, marketing area, or §§ 927.25 and 927.28 of Federal Order No. 27 for the New York-New Jersey marketing area.

(c) Any plant having status as a pool plant under another Federal order for December of any year shall not qualify as a pool plant under this part for such month of December or the next following January through June, inclusive, even though such plant meets the requirements of § 1019.3(c) (2) or (3), unless it has been withdrawn as a pool plant under the other order in the manner provided in such order.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

§ 1019.50 Computation of the obligation of each pool handler.

For each month, the market administrator shall compute the value of milk for each pool handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 1019.24 by the applicable class price, and total the resulting amounts;

(b) Add the amount of any payments due from such handler pursuant to § 1019.46(a), (b) or (c);

(c) Add an amount computed by multiplying the amount of overage computed pursuant to § 1019.24 (b) (12) and (c) by the applicable class price adjusted by the butterfat differential computed pursuant to § 1019.61;

(d) Add the amounts computed under subparagraphs (1), (2) and (3) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the month by the pounds of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 1019.24 (b) (10) and (c) for the preceding month, or the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 1019.24 (b) (10) and (c) for the month, whichever is less;

(2) If the pounds on which payment applicable pursuant to subparagraph (1) above are less than the pounds subtracted from Class I milk pursuant to § 1019.24 (b) (10) and (c) for the month, add an additional amount computed by multiplying by the rate of payment pursuant to § 1019.46(b), the pounds of skim milk and butterfat in other source milk received during the preceding month and not priced under another Federal order which is in excess of the pounds of skim milk and butterfat remaining in Class II milk, exclusive of shrinkage subtracted pursuant to § 1019.24 (b) (1) and (c) for the preceding month and ending inventory for such month, and

(3) If the sum of the pounds on which payment is applicable pursuant to subparagraphs (1) and (2) above is less than the pounds subtracted from Class I milk pursuant to § 1019.24 (b) (10) and (c) for the month, add a further amount computed by multiplying by the difference between the Class II price for the preceding month and the Class I price for the month, any remaining amounts of skim milk and butterfat which are in excess of that portion classified and priced as Class I milk as defined in another Federal order and which were assigned to Class II milk pursuant to § 1019.24 (b) (5) and (c) in the preceding month.

§ 1019.51 Computation of the basic uniform price.

For each month the market administrator shall compute a uniform price per hundredweight, as follows:

(a) Combine into one total the net obligation computed pursuant to § 1019.50 for each handler who made the reports prescribed in § 1019.30(a) for the month and who were not in default of payments pursuant to § 1019.65 for the preceding month.

(b) Deduct the amount of the plus differentials applicable pursuant to § 1019.63 and add the amount of the minus differentials applicable pursuant to § 1019.62.

(c) Subtract for each of the months of April, May and June an amount computed by multiplying the total hundredweight of producer milk for such month by 15 cents;

(d) Add for each of the months of July, August and September an amount representing one-third of the aggregate amount subtracted pursuant to paragraph (c) of this section for the immediately preceding three-month period, April–June.

(e) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund.

(f) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section.

(g) Subtract not less than 4 cents nor more than 5 cents. The result is the "basic uniform price" for producer milk containing 3.7 percent butterfat received at a plant to which no zone price differential is applicable.

PAYMENTS

§ 1019.60 Time and method of payment for producer milk.

Except as provided in paragraph (b) of this section, each handler shall make

payment to each producer from whom milk is received during the month, as follows:

(a) On or before the 22d day after the end of each month, for the quantity of milk received during the month, at not less than the basic uniform price per hundredweight computed pursuant to § 1019.51, subject to the differentials provided in § 1019.61, § 1019.62 and § 1019.63: *Provided,* That with respect to each deduction for hauling, or for any other purpose, made from such payment, the burden shall rest upon the handler making the deduction to prove that each deduction is authorized, and properly chargeable to the producer: *And provided further,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1019.66, he may reduce pro rata his payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payment pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of an association of producers which the Secretary determines is authorized by its producer-members to collect payment for their milk and which has so requested any handler in writing, such handler, on or before the 21st day after the end of each month, shall pay the association for milk received during such month from the producer-members of such association, as determined by the market administrator, an amount not less than the total due such producer-members as determined pursuant to paragraph (a) of this section.

(c) In the case of a handler who receives fluid milk products from the plant of an association of producers in its capacity as a handler, such handler, on or before the 21st day after the end of each month, shall pay such association not less than the value of skim milk and butterfat in such fluid milk products as classified pursuant to § 1019.24 at the applicable class prices computed for such month pursuant to § 1019.40 subject to the butterfat differential computed pursuant to § 1019.61.

§ 1019.61 Butterfat differential.

Each handler, in making payments to each producer or to an association of producers for milk received during each month, shall add for each one-tenth of 1 percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the market administrator as follows: Subtract 52.5 cents from the weighted average price per 40-quart can of 40 percent bottling quality cream, f.o.b. Boston, as reported by the United States Department of Agriculture for the period between the 15th day of the month for which the butterfat differential is computed and the 16th day of the preceding month, inclusive, divide the remainder by 330, and round to the nearest cent. If the cream price described above is not reported as indicated, the butterfat differential shall be determined by multiplying by .125 the average of the daily prices, using the midpoint of any range as one price, for Grade A (92-score) butter at wholesale in the New York market as reported by the United States Department of Agriculture, for the period between the 15th day of the month for which the butterfat differential is computed and the 16th day of the preceding month, inclusive, and round to the nearest cent.

§ 1019.62 Zone price differentials.

In making payments to producers pursuant to § 1019.60 the uniform price to be paid for producer milk received at the handler's pool plant(s) shall be subject to the differential set forth in column C of the table in § 1019.42(b).

§ 1019.63 Nearby farm location differentials.

(a) In making payments to producers for milk received from a farm located in Connecticut, Rhode Island, in that portion of New York State east of the Hudson River and south of the New York State Extension of the Massachusetts Turnpike, or in that portion of Massachusetts south of the Massachusetts Turnpike, there shall be added 46 cents per hundredweight.

(b) In making payments to producers for milk received from a farm located outside the area described in paragraph (a) of this section, but within that portion of New York State east of the Hudson River and south of the northern boundaries of North Greenbush, Sand Lake and Stephentown townships in Rensselaer County, there shall be added 23 cents per hundredweight.

§ 1019.64 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit (a) all payments made by handlers of monies due producers pursuant to §§ 1019.46(d), 1019.65, 1019.67 and 1019.68 and out of which he shall make all payments of monies payable to producers pursuant to §§ 1019.66, 1019.67 and 1019.68: *Provided,* That the market administrator shall offset any such payment due to any handler against payment due from such handler; and (b) all amounts subtracted pursuant to § 1019.51(c), which shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1019.51(d).

§ 1019.65 Payments to the producer-settlement fund.

On or before the 19th day after the end of each month, each handler, including an association of producers which is a handler, shall pay to the market administrator for payment to producers through the producer-settlement fund the amount by which the net pool obligation of such handler computed pursuant to § 1019.50 is greater than the sum required to be paid his producers as determined by the application of the basic uniform price computed pursuant to § 1019.51 adjusted by the differentials applicable pursuant to §§ 1019.62 and 1019.63.

§ 1019.66 Payments out of the producer-settlement fund.

On or before the 21st day after the end of the month, the market administrator shall pay to each handler for payment to producers the amount by which the sum required to be paid his producers as determined by the application of the basic blended price computed pursuant to § 1019.51 adjusted by the differentials applicable pursuant to §§ 1019.62 and 1019.63 is greater than the net pool obligation of such handler computed pursuant to § 1019.50: *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1019.67 Errors in payment.

Whenever verification by the market administrator of a handler's reports, books, records or accounts results in adjustments to be made for any reason which result in moneys due the market administrator from such handler, such handler from the market administrator, or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount due and explain the basis of such adjustment and payment thereof shall be made on or before the date for making payment, set forth in the provision under which such error occurred, for the month following that in which such notification is given.

§ 1019.68 Overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1019.46, 1019.65, 1019.69 and 1019.70 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 1019.69 Marketing service deductions.

(a) In making payments to producers pursuant to § 1019.60(a), each handler, with respect to all milk received from each producer other than himself during each month, except as set forth in paragraph (b) of this section, shall deduct 3 cents per hundredweight, or such lesser amount as the Secretary shall determine to be sufficient, and, on or before the 19th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator only in providing for market information, and for verification of weights, samples, and tests of milk received from such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk received from such producers.

(b) In the case of producers who are members of an association of producers which the Secretary determines is actually performing the services set forth

in paragraph (a) of this section, each handler, in lieu of the deductions specified in paragraph (a) of this section, shall make such deductions from payments made pursuant to § 1019.60(a) as may be authorized by such producers and pay, on or before the 20th day after the end of each month, such deductions to such associations, accompanied by a statement showing the pounds of milk received from each producer from whom the deduction was made.

§ 1019.70 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 19th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, as follows:

(a) Each pool handler shall make such payment with respect to all: (1) Receipts of producer milk, including such handler's own production; (2) receipts of exempt milk under § 1019.4(g)(1); and (3) other source milk assigned to Class I milk and not subject to an expense of administration assessment under another Federal order.

(b) Each handler operating a nonpool plant shall make such payment with respect to other source milk disposed of from such plant in the marketing area on routes, except other source milk subject to an expense of administration assessment under another Federal order.

§ 1019.71 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service on such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 1019.80 Effective time.

The provisions of this part, or any amendments to its provisions, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 1019.81.

§ 1019.81 Suspension or termination.

The Secretary may suspend or terminate this part or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1019.82 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 1019.83 Liquidation.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

§ 1019.84 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 1019.85 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C., this 25th day of February 1959, to be effective as follows:

§§ 1019.0 through 1019.4, §§ 1019.10 through 1019.12(i), § 1019.12(k), §§ 1019.20 through 1019.24, § 1019.30, § 1019.31(b), § 1019.33, § 1019.34, § 1019.45, § 1019.47, § 1019.67, § 1019.68, § 1019.71, and §§ 1019.80 through 1019.85 shall be effective March 1, 1959, and all of the remaining provisions shall be effective April 1, 1959.

[SEAL] CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 59-1786; Filed, Feb. 27, 1959; 8:50 a.m.]

Title 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board—Federal Aviation Agency

SUBCHAPTER A—CIVIL AIR REGULATIONS

PART 62—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS AND OVERDUE AIRCRAFT

SUBCHAPTER D—SAFETY INVESTIGATION REGULATIONS

PART 320—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS AND OVERDUE AIRCRAFT

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of February 1959.

Under the Civil Aeronautics Act the Board could permit the Administrator, by delegation of authority, to investigate accidents and determine the probable cause thereof. Such a delegation was in fact made by the Board with respect to accidents of fixed-wing aircraft having a maximum take-off weight of 12,500 pounds, 18 F.R. 7499. Subpart A of Part 62 of the Civil Air Regulations reflected this delegation to the Administrator of Civil Aeronautics.

The Federal Aviation Act of 1958 repealed the Board's authority to delegate its accident investigation function to the Administrator, thereby rendering the outstanding delegation void. The new Act contemplates that the accident investigation function is to be performed by the Board itself. Therefore, in lieu of a power of delegation of the function, the new Act merely permits the Board to request the Administrator of the Federal Aviation Agency to investigate the facts and circumstances surrounding air-

craft accidents and to report them to the Board, the function of determining probable cause being reserved to the Board in all cases.

The Board recently issued Public Notice PN 13, effective December 31, 1958, requesting the Administrator of the Federal Aviation Agency to investigate all civil aircraft accidents involving fixed-wing aircraft which have a maximum gross take-off weight of 12,500 pounds or less, except accidents involving aircraft operated by certificated Alaskan air carriers and accidents involving fatal injuries to any occupant of the aircraft, 23 F.R. 10492. This request to the Administrator is necessary because sufficient funds have not been made available to the Board to provide adequate facilities and personnel to handle the additional workload prescribed by the Act. Therefore, the request is temporary and may be rescinded by the Board through written notice to the Administrator.

This change in the law and arrangements necessitates changes in the existing reporting regulation which are not of a substantive nature. The substance of the regulation is being transferred to Subchapter D–Safety Investigation Regulations as new Part 320. Subpart A now contains the notifying and reporting requirements applicable to accidents investigated by the Board itself, while Subpart B contains those applicable to the accidents investigated by the Administrator pursuant to PN 13. Subpart B reflects the fact that under the present request of the Board as set forth in PN 13, accidents involving fatalities on board aircraft are excluded, as well as the fact that Subpart B is applicable only as long as the request remains outstanding in its present form.

As before, violations of either subpart of Part 320 will constitute violations of Board regulations which will be prosecuted by the Board's Office of Compliance under the provisions of the Act applicable to violations of Title VII and rules made thereunder.

Since there are no substantive changes made in this regulation and it does not impose any additional burdens on any person, public notice and proceedings hereon are not required and not in the public interest, and the new regulation may be made effective before the expiration of 30 days from the time of its publication.

Accordingly, the Board, effective upon publication in the FEDERAL REGISTER, i.e., February 28, 1959:

(1) Repeals Part 62 of the Civil Air Regulations (14 CFR, Chapter I, Subchapter A, Part 62);

(2) Changes the designation of Subchapters D and E of its regulations (14 CFR, Chapter I) to Subchapters E and F, respectively; and

(3) Promulgates a new subchapter of its regulations to read as follows:

APPLICABILITY AND DEFINITIONS

Sec.
320.1 Applicability of this part.
320.2 Definitions.

Subpart A—Notification and reporting to the Civil Aeronautics Board

Sec.
320.4 Applicability of Subpart A of this part.

NOTIFICATION REQUIREMENTS

320.5 When notification is to be given.
320.6 Responsibility for giving notification.
320.7 To whom notification is directed.
320.8 Information to be given in notification.

REPORTING REQUIREMENTS

320.10 When a report is made.
320.11 Responsibility for making report.
320.12 Form of report and contents.
320.13 To whom the report is directed.

PRESERVATION OF AIRCRAFT WRECKAGE AND RECORDS

320.15 Preservation of wreckage and records.
320.16 Prohibition against removing or disturbing wreckage and records.
320.17 Recording of original position and condition of wreckage.
320.18 Release of wreckage.

NOTIFICATION OF OVERDUE AIRCRAFT

320.20 When notification is to be given.

Subpart B—Notification and reporting to the Administrator of the Federal Aviation Agency

320.30 Applicability of Subpart B of this part.

NOTIFICATION REQUIREMENTS

320.31 When notification is to be given.
320.32 Responsibility for giving notification.
320.33 To whom notification is directed.
320.34 Information to be given in notification.

REPORTING REQUIREMENTS

320.38 When a report is made.
320.39 Responsibility for making report.
320.40 Form of report and contents.
320.41 To whom the report is directed.

PRESERVATION OF AIRCRAFT WRECKAGE AND RECORDS

320.45 Preservation of aircraft wreckage and records.
320.46 Prohibition against removing or disturbing aircraft wreckage and records.
320.47 Recording of original position and condition of wreckage.
320.48 Release of wreckage.

NOTIFICATION OF OVERDUE AIRCRAFT

320.50 When notification is to be given.

AUTHORITY: §§ 320.1 to 320.50 issued under sec. 204(a), 72 Stat. 743, 49 U.S.C. 1324. Interpret or apply sec. 701(a)(d)(f), 72 Stat. 781, 49 U.S.C. 1441.

APPLICABILITY AND DEFINITIONS

§ 320.1 Applicability of this part.

This part establishes requirements for the notification and reporting of accidents involving civil aircraft in the United States, its Territories and Possessions, and aircraft of United States registry wherever they occur. It further establishes requirements for the notification of overdue aircraft. Subpart A of this part covers the notification and reporting to be made to the Civil Aeronautics Board, while Subpart B covers the notification and reporting to be made to the Administrator of the Federal Aviation Agency concerning those aircraft the accidents of which are investigated by the Administrator pursuant to request by the Board under section 701(f) of the Federal Aviation Act of 1958.

§ 320.2 Definitions.

As used in this part the words listed below shall be defined as follows:

(a) *Act.* "Act" means the Federal Aviation Act of 1958, 72 Stat. 731, 49 U.S.C. 1301 et seq.

(b) *Administrator.* "Administrator" means the Administrator of the Federal Aviation Agency.

(c) *Board.* "Board" means the Civil Aeronautics Board.

(d) *Aircraft accident.* An aircraft accident is an accident which occurs during the starting or warming up of an engine or engines, or operation of an aircraft, which results in serious or fatal injury to one or more persons or in substantial damage to any aircraft, or which involves a collision of two or more aircraft. Whenever serious or fatal injury results from contact with a rotating propeller which is installed on an aircraft, it shall be considered an aircraft accident.

(e) *Aircraft accident incident to flight.* An aircraft accident incident to flight is an aircraft accident which occurs between the time an engine or engines are started for the purpose of commencing flight until the aircraft comes to rest with all engines stopped for complete or partial deplaning or unloading. It excludes death or injuries to persons on board which result from illness, altercations, and other incidents not directly attributable to flight operation.

(f) *Aircraft accident not incident to flight.* An aircraft accident not incident to flight is an aircraft accident other than one defined in paragraph (e) of this section as incident to flight.

(g) *Operator.* An operator of aircraft is the person who causes or authorizes the operation of the aircraft, such as the owner or lessee of an aircraft.

(h) *Fatal injury.* A fatal injury is an injury which results in death within 30 days.

(i) *Serious injury.* A serious injury is an injury which requires hospitalization and medical treatment for a period of five or more days, or results in a fracture of any bone (except simple fractures of fingers, toes, or nose), lacerations which cause severe hemorrhages, or involve muscles, injury to any internal organ, or second or third degree burns or any burns involving more than five percent of the body surface: *Provided,* That the injury does not result in death within 30 days.

(j) *Substantial damage.* Substantial damage is damage which necessitates major overhaul of the aircraft or the replacement of or extensive repairs to any major component or combination of components of the aircraft. It does not include damage such as scraped wing tips, bent fairing or cowling, small punctured holes in the skin or fabric, dented skin or trailing edge, repairable damage to propeller blades, or damage to tires, engine accessories, or brakes.

(k) *Small fixed-wing aircraft.* Fixed-wing aircraft having a maximum certificated take-off weight of 12,500 pounds or less.

Subpart A—Notification and Reporting to the Civil Aeronautics Board

§ 320.4 Applicability of Subpart A of this part.

The provisions of this subpart apply to all aircraft except those investigated by the Administrator pursuant to an outstanding request by the Board under section 701(f) of the Act.

NOTE: By Public Notice PN 13, 23 F.R. 10492, effective December 31, 1958, the Board requested the Administrator to investigate all civil aircraft accidents involving fixed-wing aircraft which have a certificated maximum gross take-off weight of 12,500 pounds or less, except accidents involving aircraft operated by air carriers authorized by certificate of public convenience and necessity to engage in air transportation in the State of Alaska, and accidents in which fatal injuries have occurred to any occupants of such aircraft. Amendments to, or rescission of, this public Notice will be published in the FEDERAL REGISTER.

NOTIFICATION REQUIREMENTS

§ 320.5 When notification is to be given.

Immediate notification shall be given of any aircraft accident involving aircraft within the applicability of this subpart. Immediate notification also shall be given of any occurrence of fire involving any of the components or systems aboard the aircraft when incident to flight, regardless of the extent of injury to occupants or damage to the aircraft.

§ 320.6 Responsibility for giving notification.

The operator of the aircraft shall be responsible for giving notification as provided in § 320.5.

§ 320.7 To whom notification is directed.

The notification shall be directed to the Civil Aeronautics Board direct or through its nearest office. The notification shall be sent by the most expeditious means of communication available.

§ 320.8 Information to be given in notification.

The notification shall include the following information concerning the accident, if available: Location, date, time of day, number of persons involved, injuries to each, aircraft identification including registration number, aircraft make and model, names of crew members, operator, and briefly the nature of circumstances surrounding the accident.

REPORTING REQUIREMENTS

§ 320.10 When a report is made.

A written report shall be made of every aircraft accident incident to flight involving aircraft of United States registry wherever it may occur.[1] A written report will not be required on any aircraft accident not incident to flight, unless the operator has been requested to make such a report by an authorized representative of the Civil Aeronautics Board.

[1] Refer to definitions contained in paragraphs (d), (e), and (f) of § 320.2.

§ 320.11 Responsibility for making report.

The operator of the aircraft involved in the accident shall be responsible for making the written report required by § 320.10. The report shall be made as soon as practicable and good cause shown in writing for any delay over 10 days. Each member of the crew involved in the accident, if physically able at the time of the submission of the report, shall attach thereto a signed statement setting forth the facts, conditions, and circumstances pertinent to the accident. If incapacitated at the time of the submission of the report, each crew member shall submit a statement as soon as physically able.

§ 320.12 Form of report and contents.

The report shall be made in duplicate on an accident report form furnished by the Civil Aeronautics Board and shall contain all available information required therein.[2]

§ 320.13 To whom the report is directed.

The report shall be mailed or delivered to the office or representative of the Civil Aeronautics Board nearest the residence of the operator involved, or as otherwise directed by an authorized representative of the Civil Aeronautics Board.[3]

PRESERVATION OF AIRCRAFT WRECKAGE AND RECORDS

§ 320.15 Preservation of wreckage and records.

Aircraft wreckage and records thereof involved in or pertaining to an aircraft accident shall be preserved for the Board by the operator.[4]

§ 320.16 Prohibition against removing or disturbing wreckage and records.

Aircraft wreckage or records thereof involved in or pertaining to an aircraft accident shall not be disturbed or removed, unless specific permission is granted by an authorized representative of the Civil Aeronautics Board, except where necessary (a) to give assistance to persons injured or trapped therein, (b) to protect such wreckage from further serious damage, or (c) to protect the public from injury.

§ 320.17 Recording of original position and condition of wreckage.

Whenever wreckage is moved in accordance with the provisions of § 320.16, prior to the removal, sketches or photographs shall be made of the original position and condition of the wreckage and marks on the ground, and any pertinent data which cannot be effectively photographed shall be recorded, unless the resultant delay would endanger the lives of persons injured or trapped, or unless essential public interests can be protected only by immediate movement. In any event, movement of the wreckage shall be so accomplished as to entail the minimum possible disturbance thereof, and shall be preserved in accordance with the provisions of § 320.15.

§ 320.18 Release of wreckage.

Aircraft wreckage or records thereof involved in or pertaining to an aircraft accident shall not be released for repair, salvage, disposal, or any other purpose until permission is granted by an authorized representative of the Civil Aeronautics Board.

NOTIFICATION OF OVERDUE AIRCRAFT

§ 320.20 When notification is to be given.

When an aircraft is overdue and the operator believes that it has been involved in an accident, the operator shall immediately notify the Civil Aeronautics Board in accordance with the provisions of §§ 320.7 and 320.8. In addition, it shall be the responsibility of the operator to furnish such records pertinent to the flight as may be requested by the Civil Aeronautics Board.

NOTE: The reporting and record-keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Subpart B—Notification and Reporting to the Administrator of the Federal Aviation Agency

§ 320.30 Applicability of Subpart B of this part.

The provisions of this subpart apply only to those aircraft which are investigated by the Administrator pursuant to an outstanding request by the Board under section 701(f) of the Act.

NOTE: See note under § 320.4.

NOTIFICATION REQUIREMENTS

§ 320.31 When notification is to be given.

In the case of aircraft within the applicability of this subpart, immediate notification shall be given when any aircraft accident incident to flight occurs which (a) is known or believed to have resulted from structural failure of an aircraft,

[2] Report Forms CAB 454 and, for small fixed-wing aircraft accidents, ACA 2400, are available from the Washington offices of the Civil Aeronautics Board, Universal Building, Washington 25, D.C., and from all field offices of the Board.

[3] The locations of the field offices of the Board are as follows:

New York Office: Room 101, Federal Building, New York International Airport, Jamaica, N.Y.

Miami Office: P.O. Box 931, Miami International Airport Branch, Miami 48, Fla.

Chicago Office: 6127 West Cermak Road, Cicero, Ill.

Kansas City Office: 4825 Troost Avenue, Kansas City 10, Mo.

Fort Worth Office: P.O. Box 105, Fort Worth 1, Tex.

Los Angeles Office: Pacific Building, 1725 Centinella Avenue, Inglewood, Calif.

Oakland Office: P.O. Box 2386, Oakland Airport Station, Oakland 14, Calif.

Seattle Office: Room 202, Administration Building, King County Airport, Seattle 8, Wash.

Anchorage Office: P.O. Box 2219, Anchorage, Alaska.

[4] Where accidents occur outside of the United States, its Territories, or possessions, the operator shall only be responsible for taking such measures for preserving aircraft wreckage or records as may legally be taken in the place where the accident occurs.

aircraft engine, or propeller, (b) involves collision of two or more aircraft in the air, or (c) results in serious injury to any person, or fatal injury to any person not an occupant of the aircraft. Notification shall also be given of any occurrence of fire involving any of the components or systems on board the aircraft when incident to flight, regardless of the extent of injury to occupants or damage to the aircraft.

NOTE: Accidents involving fatal injury to occupants of the aircraft are investigated by the Board. See note under § 320.4.

§ 320.32 Responsibility for giving notification.

The pilot or pilots, or, if the pilots are incapacitated, the operator shall be responsible for giving such notification.

§ 320.33 To whom notification is directed.

The notification shall be directed to the nearest Federal Aviation Agency communications station, aviation safety district office, or aviation safety inspector.

§ 320.34 Information to be given in notification.

The notification shall include the following information concerning the accident, if available: Location, date, time of day, number of persons involved, injuries to each, aircraft identification including registration number, aircraft make and model, names of crew members, operator, and briefly the nature of circumstances surrounding the accident.

REPORTING REQUIREMENTS

§ 320.38 When a report is made.

A written report shall be made of every aircraft accident incident to flight involving aircraft of United States registry wherever it may occur, when there is serious injury or fatal injury to a nonoccupant of the aircraft, or where the reasonably estimated cost of repair is $100 or more. A written report may also be required for an aircraft accident not incident to flight, or for any accident involving minor injury or less than $100 estimated cost of repair if the pilot, owner, or operator is requested by an authorized representative of the Federal Aviation Agency to furnish it.

§ 320.39 Responsibility for making report.

The pilot or operator of the aircraft involved in the accident shall be responsible for making the written report required by § 320.38. The report shall be made as soon as possible and good cause shown in writing for any delay over seven days. If the operator is not the pilot, then each pilot involved in the accident, if physically able at the time of the submission of the report, shall sign the report or attach thereto a signed statement setting forth the facts, conditions, and circumstances pertinent to the accident. If incapacitated at the time of the submission of the report, each pilot shall submit such a statement as soon as he is physically able to do so.

§ 320.40 Form of report and contents.

The report shall be made in triplicate on an accident report form furnished by the Federal Aviation Agency and shall contain all available information required therein.

§ 320.41 To whom the report is directed.

The report shall be mailed or delivered to the nearest aviation safety district or regional office of the Federal Aviation Agency. However, where a State by agreement with the Agency actively participates in the investigation of non-air-carrier accidents and the accident occurred in that State, a State aviation official or investigator is authorized to receive such report and exhibits in behalf of the Agency.

NOTE: Where a State aviation authority receives such an accident report and exhibits or conducts the investigation in behalf of the Agency, distribution of the copies of the report shall be in accordance with the agreement with the Agency.

PRESERVATION OF AIRCRAFT WRECKAGE AND RECORDS

§ 320.45 Preservation of aircraft wreckage and records.

Aircraft wreckage and records thereof involved in or pertaining to an accident of which notification must be given under the provisions of § 320.31 shall be preserved for the Agency by the pilot, owner, or operator.[5] Wreckage of aircraft involved in accidents not requiring notification under § 320.31 need not be preserved, unless specifically ordered by an authorized representative of the Federal Aviation Agency.

§ 320.46 Prohibition against removing or disturbing aircraft wreckage and records.

Aircraft wreckage and records thereof involved in or pertaining to an accident of which notification must be given under the provisions of § 320.31 shall not be disturbed or removed, unless specific permission is granted by an authorized representative of the Federal Aviation Agency, except where necessary (a) to give assistance to persons injured or trapped therein, (b) to protect such wreckage from further serious damage, or (c) to protect the public from injury.

§ 320.47 Recording of original position and condition of wreckage.

Whenever wreckage is moved in accordance with the provisions of § 320.46, prior to the removal, sketches or photographs shall be made of the original position and condition of the wreckage and marks on the ground, and any pertinent data which cannot be effectively photographed shall be recorded, unless the resultant delay would endanger the lives of persons injured or trapped, or unless essential public interests can be protected only by immediate movement. In any event, movement of the wreckage shall be so accomplished as to entail the minimum possible disturbance thereof, and shall be preserved in accordance with the provisions of § 320.45.

[5] Where accidents occur outside of the United States, its Territories, or possessions, the operator shall only be responsible for taking such measures for preserving aircraft wreckage or records as may legally be taken in the place where the accident occurs.

§ 320.48 Release of wreckage.

Aircraft wreckage or records thereof involved in or pertaining to an accident of which notification must be given under the provisions of § 320.31 shall not be released for repair, salvage, disposal, or any other purpose until permission is granted by an authorized representative of the Federal Aviation Agency.

NOTIFICATION OF OVERDUE AIRCRAFT

§ 320.50 When notification is to be given.

When an aircraft is overdue and the operator or owner believes that it has been involved in an accident, the operator or owner shall immediately notify the Federal Aviation Agency in accordance with the provisions of §§ 320.32 through 320.34. In addition, it shall be the responsibility of the owner or operator to furnish such records pertinent to flight as may be requested by the Federal Aviation Agency. If the aircraft is still missing upon the expiration of seven days, the reporting provisions of §§ 320.38 through 320.41 shall be complied with.

By the Civil Aeronautics Board.

[SEAL] MABEL MCCART,
Acting Secretary.

[F.R. Doc. 59-1792; Filed, Feb. 27, 1959; 8:51 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7219]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

R. H. Macy & Co., Inc., et al.

Subpart—*Advertising falsely or misleadingly:* § 13.155 *Prices:* Exaggerated as regular and customary. Subpart—*Misrepresenting oneself and goods—* Prices: § 13.1805 *Exaggerated as regular and customary.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, R. H. Macy & Co., Inc., et al., New York, N.Y., Docket 7219, January 30, 1959]

In the Matter of R. H. Macy & Co., Inc., a Corporation, The Tire Mart, Inc., a Corporation, The Tire Mart Stores Corp., a Corporation, and Harold Leitman, Hyman Kaufman, and Max L. Leitman, Individually and as Officers of The Tire Mart, Inc., and The Tire Mart Stores Corp.

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a corporation operating retail stores in New York, together with the licensee of one of its departments, with advertising falsely in newspapers that automobile seat covers offered for $15.94 and $10.99, respectively, had sold recently at $29.94 to $39.94, and $22.94.

After acceptance of an agreement providing for entry of a consent order, the hearing examiner made his initial decision and order to cease and desist which became on January 30 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondents R. H. Macy & Co., Inc., a corporation, The Tire Mart, Inc., a corporation, and The Tire Mart Stores Corp., a corporation, and their officers and respondents Harold Leitman, Hyman Kaufman and Max L. Leitman, individually and as officers of The Tire Mart, Inc., and The Tire Mart Stores Corp., and respondents' representatives, agents and employees directly or through any corporate or other device in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of automobile seat covers, automotive parts, accessories, and related products, do forthwith cease and desist from:

1. Representing directly or by implication that any amount is the price at which such merchandise is ordinarily or usually sold by respondents when such amount is in excess of the price at which such merchandise has been regularly sold by respondents in the recent regular course of business.

2. Representing directly or by implication that savings from respondents' ordinary or usual price will result from the purchase of such merchandise unless based upon the price at which such merchandise has been sold by respondents in the recent regular course of business.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: January 30, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 59-1749; Filed, Feb. 27, 1959; 8:46 a.m.]

[Docket 7224]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

New Jersey Research Bureau and Aaron C. Selenfriend

Subpart—*Advertising falsely or misleadingly:* § 13.15 *Business status, advantages, or connections:* Nature. Subpart—*Misrepresenting oneself and goods*—Business status, advantages or connections: § 13.1490 *Nature, in general.* Subpart—*Using misleading name*—Vendor: § 13.2425 *Nature, in general.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, New Jersey Research Bureau et al., Newark, N.J., Docket 7224, January 30, 1959]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a collection agency in Newark, N.J., with using misrepresentations to obtain current information concerning delinquent debtors, including use of such terms as "World-Wide Inheritance Service", "Tracers of Missing Heirs", etc.

After acceptance of an agreement providing for entry of a consent order, the hearing examiner made his initial decision and order to cease and desist which became on January 30 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents New Jersey Research Bureau, a corporation, and its officers, and Aaron C. Selenfriend, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with obtaining information concerning delinquent debtors, or in the collection of monies from such persons, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That respondents are engaged in the business of locating heirs, next-of-kin, devisees, or legatees, entitled to share in the estates of deceased persons.

(b) That a likelihood or possibility exists that the debtor, if he furnishes requested information, will share in the estate of a deceased person.

2. Using the words "World-Wide Inheritance Service" or any other words of similar import or meaning, or misrepresenting, in any manner, the territorial extent of their operations.

3. Using, or placing in the hands of others for use, any forms, questionnaires, or other materials, printed or written, which do not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: January 30, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 59-1750; Filed, Feb. 27, 1959; 8:46 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 522—EMPLOYMENT OF LEARNERS

Hosiery Industry

On January 27, 1959, notice was published in the FEDERAL REGISTER (24 F.R. 584) that the Administrator, Wage and Hour and Public Contracts Divisions, proposed to amend 29 CFR, Part 522, for the purpose of increasing wage rates for all learners in the Hosiery Industry by five cents, and to divide one occupational classification of learners into two. It was also noticed that all outstanding learner certificates under which learners are employed would be changed to incorporate the wage rates and terms of the amended regulations.

The notice provided a period of 15 days within which interested parties might submit data, views, or arguments pertaining to the proposed amendments. The time for filing such data and comments expired on February 11, 1959, and no responses were received. Accordingly the proposed amendments are made final.

The amendments are based on section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1068, as amended; 29 U.S.C. 214), providing in substance for the employment of learners at subminimum wage rates to the extent necessary to prevent curtailment of opportunities for employment, and are promulgated in the light of increased wage rates in the Hosiery Industry, administrative experience under the $1.00 an hour statutory minimum (Fair Labor Standards Amendments of 1955, 69 Stat. 711), and after consultation with interested persons in the industry.

Therefore in accordance with section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1003), and under the authority of section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1068, as amended; 29 U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR, 1950 Supp., p. 165), and General Order No. 45-A (15 F.R. 3290), 29 CFR, Part 522 is hereby amended as follows.

§ 522.43 [Amendment]

1. Subparagraph (1), paragraph (a) of § 522.43 which relates to payment of subminimum wage rates to learners in the Seamless Branch of the Hosiery Industry is amended by deleting "80 cents" wherever this sum appears in the column headed "Subminimum rates", and inserting in lieu thereof "85 cents", and by deleting "87½ cents" wherever this sum appears in the column headed "Subminimum rates" and inserting in lieu thereof "92½ cents".

2. Subparagraph (1), paragraph (a) of § 522.43 is further amended by adding the phrase "women's nylon only" after the learner occupation "Boarding" where it appears in the column headed "Learner Occupations", and by adding a new occupation of "Boarding, other than

women's nylon" as the last learner occupation in this subparagraph under the column headed "Learner Occupations". The new occupation "Boarding, other than women's nylon" is to be included in the bracket of column 2 specifying a learning period of 240 hours.

3. Subparagraph (2), paragraph (a) of § 522.43 which relates to payment of subminimum wage rates to learners in the Full Fashioned Branch of the Hosiery Industry is amended by deleting "85 cents" wherever this sum appears in the column headed "subminimum rates" and inserting in lieu thereof "90 cents", and by deleting "92½ cents" wherever this sum appears in the column headed "Subminimum rates" and inserting in lieu thereof "97½ cents".

4. Paragraph (d) of § 522.43 is amended to read as follows:

(d) A worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one-half of the learning period authorized for that occupation at not less than 92½ cents an hour in the seamless branch and not less than 97½ cents an hour in the full-fashioned branch. A worker who has had partial training in any authorized learner occupation may be transferred to any other learner occupation for either: (1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than 92½ cents an hour in the seamless branch and not less than 97½ cents an hour in the full-fashioned branch; or (2) the balance of the number of hours permitted as a learning period for the occupation to which he or she is being transferred, at the applicable subminimum rates set forth in paragraph (a) of this section: *Provided, however,* That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupations of folding or inspection; and (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned or from the full-fashioned branch to the seamless, if the worker is employed in the same occupation as that in which he or she has been previously employed.

5. A new section designated § 522.44 is added to read as follows:

§ 522.44 Amendment of certificates previously issued.

Pursuant to § 522.8, learners certificates heretofore issued in the Hosiery Industry shall be amended to restrict the employment of learners under such certificates to the limitations on their employment under new certificates which are expressed in § 522.43.

(Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214)

This amendment shall become effective April 6, 1959.

Signed at Washington, D.C., this 24th day of February 1959.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 59-1767; Filed, Feb. 27, 1959; 8:48 a.m.]

PART 522—EMPLOYMENT OF LEARNERS

Independent Telephone Industry

On January 27, 1959, notice was published in the FEDERAL REGISTER (24 F.R. 585), that the Administrator of the Wage and Hour and Public Contracts Divisions, proposed to amend certain sections of 29 CFR, Part 522, concerning employment of learners in the Independent Telephone Industry, for the purpose of providing: (1) A 240 hour learning period in exchanges of 3,000 stations or more; (2) an increase in present minimum learner rates, and (3) for application of these amendments, as of their effective date, to learners employed pursuant to such special certificates.

The notice provided a period of fifteen days within which interested persons might submit data, views, or arguments pertaining to the proposed regulations. Comments have been received from The Communications Workers of America, AFL–CIO, and The United States Independent Telephone Association. After consideration of all relevant matter presented, I conclude that the amendments should be adopted as proposed. Accordingly, the proposed amendment is made final.

The amendment is based on section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1068, as amended; 29 U.S.C. 214), providing in substance for the employment of learners at subminimum wage rates to the extent necessary to prevent curtailment of opportunities for employment, and is promulgated in the light of administrative experience in the operation of the regulations since the effective date of the $1.00 an hour statutory minimum (Fair Labor Standards Amendments of 1955, 69 Stat. 711), and after consultation with interested parties in the industry.

Therefore in accordance with section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003), and under the authority of section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1068, as amended; 29 U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR, 1950 Supp., p. 165), and General Order No. 45–A (15 F.R. 3290), 29 CFR, Part 522 is hereby amended as follows.

1. Section 522.73 is amended to read as follows:

§ 522.73 Learning periods.

The maximum learning period which may be provided for any learner under a special certificate issued in this industry for employment in training for and in switchboard operating shall not extend beyond the first 480 hours of employment for exchanges of less than 3,000 stations and 240 hours for exchanges of 3,000 stations or more.

2. Section 522.74, paragraphs (a) and (b) are amended to read as follows:

§ 522.74 Subminimum rates.

(a) For exchanges of less than 3,000 stations the subminimum hourly rates to be provided in a special certificate for learners shall be not less than 85 cents an hours for the first 240 hours, and not less than 95 cents an hour for the remaining 240 hours of the learning period.

(b) For exchanges of 3,000 stations or more the subminimum hourly rate to be provided in a special certificate for learners shall be not less than 90 cents an hour for the entire 240 hour learning period.

3. Add a new section designated as § 522.75 to read as follows:

§ 522.75 Amendment of certificates previously issued.

Pursuant to § 522.8, learner certificates heretofore issued in the independent telephone industry shall be amended to restrict the employment of learners under such certificates to the limitations on their employment under new certificates which are expressed in §§ 522.73 and 522.74.

(Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214)

This amendment shall take effect on April 6, 1959.

Signed at Washington, D.C., this 24th day of February 1959.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 59-1766; Filed, Feb. 27, 1959; 8:48 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter III—Corps of Engineers, Department of the Army

PART 311—PUBLIC USE OF CERTAIN RESERVOIR AREAS

Ferrells Bridge Reservoir Area, Cypress Creek, Texas

The Secretary of the Army having determined that the use of Ferrells Bridge Reservoir Area, Cypress Creek, Texas, by the general public for boating, swimming, bathing, fishing and other recreational purposes will not be contrary to the public interest and will not be inconsistent with the operation and maintenance of the reservoir for its primary purposes, hereby prescribes rules and regulations for its public use, pursuant to the provisions of section 209 of the Flood Control Act of 1954 (68 Stat. 1266) as follows:

1. Add new paragraph (sss) to § 311.1:

§ 311.1 Areas covered.

* * * * *

(sss) Ferrells Bridge Reservoir Area, Cypress Creek, Texas.

2. In § 311.4, add new subparagraph (47) to paragraph (a):

§ 311.4 Houseboats.

(a) * * *

(47) Ferrells Bridge Reservoir Area, Cypress Creek, Texas.

[Regs., February 2, 1959, ENGWO] (Sec. 209, 68 Stat. 1266; 16 U.S.C. 460d)

[SEAL] R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 59-1743; Filed, Feb. 27, 1959; 8:45 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 974]

[Docket No. AO-176-A13]

MILK IN COLUMBUS, OHIO, MARKETING AREA

Decision With Respect to Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Columbus, Ohio, on May 14-16 and May 19, 1958, pursuant to notice thereof issued on April 22, 1958 (23 F.R. 2807).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on January 20, 1959 (24 F.R. 531) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. Expanding the marketing area;
2. Changing the method of paying producers, including revision of the fall incentive payment plan;
3. Modifying the provisions for classifying milk transferred or diverted between plants and milk disposed of in eggnog and milk shake mixes;
4. Revising the pricing provisions, including the basis for announcing class prices, the date for announcing the Class I and Class II prices, the supply-demand adjuster, the level of the Class I and Class IV prices, the level of the Class I, Class II and Class IV butterfat differentials and the producer butterfat differential;
5. Revising the pricing of Class III milk;
6. Revising the location differentials to handlers and to producers; and
7. Revising and reissuing the entire order to add a number of new definitions, to clarify the provisions with respect to the accounting for milk, and incorporate a number of other clarifying and conforming changes in the order language.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The Columbus marketing area should be expanded to include the 10 townships of Franklin County not included in the present marketing area; all of Delaware County; the two tiers of townships in Licking County adjacent to Franklin County; all of Fairfield County except Clear Creek and Amanda townships; Fairfield, Union, Jefferson, Canaan, Oak Run and Darby townships in Madison County; and Jerome township in Union County. The present marketing area is composed of Blendon, Clinton, Franklin, Marion, Mifflin, Perry, Sharon, and Truro townships in Franklin County.

The Columbus marketing area has not been expanded since the order was issued in 1946. Since that time the incorporated area of the city of Columbus and the population in the remainder of Franklin County and the adjacent area have increased substantially. As the result of additions to the city of Columbus since the promulgation of the order, the southern and northwestern boundaries of the marketing area are now almost co-terminus with the incorporated boundary of Columbus. On the west side of the marketing area, suburbs of Columbus, including Upper Arlington, Grandview Heights, and Marble Cliff, extend to the boundary of the marketing area. Other communities, both incorporated and unincorporated, extend the contiguous relatively populous areas beyond the present marketing area boundaries into the surrounding counties of Madison, Fairfield, Licking, and Delaware. The population of the 10 townships of Franklin County not now included in the present marketing area was about 45,000 January 1, 1958. This represents an increase of about 40 percent since 1950.

The 10 townships of Franklin County not included in the present marketing area and the additional area recommended herein represent a substantial market for producer milk under the Columbus order. Nearly all of the fluid milk requirements of these 10 townships are supplied by handlers regulated under the Columbus order. One unregulated distributor from Fairfield County sells a relatively small quantity of milk in the southern part of Franklin County not now in the marketing area. Other unregulated distributors now sell milk in nearly all areas adjacent to the Franklin County line. Handlers regulated under the Columbus order supported producers in the proposal to include all of Franklin County in the marketing area. No handler or producer group opposed this extension of the marketing area.

Producers proposed that all of Fairfield County be included in the Columbus marketing area. Local distributors in Fairfield County proposed that all of this county, except the townships of Clear Creek and Amanda, be included in the Columbus marketing area. This area constitutes the primary sales area of local distributors. These distributors supply most of the fluid milk requirements in this proposed area except in the three townships of Violet, Liberty, and Bloom. Columbus handlers supply most of the fluid milk used in these townships. They also sell milk in Clear Creek and Amanda townships; however, the proportion of the total sales made in these townships by Columbus handlers is not clear. An unregulated distributor from Pickaway County also sells milk in Clear Creek and Amanda townships. An unregulated distributor from Newark, Ohio, is selling milk in Walnut township. An unregulated distributor from Zanesville, Ohio, has recently started selling milk in Rush Creek, Liberty, and Walnut townships of this county. Neither of these distributors sell substantial quantities of milk in Fairfield County at this time but resale price cutting has prevailed. In the absence of regulation for establishing prices paid dairy farmers for milk, price cutting is very likely to spread to the extent that producer prices are reduced and market instability prevails.

Dairy farmers who supply the proponent distributors with milk are closely intermingled with producers under the Columbus order. Most of these dairy farmers are members of the cooperative association which regularly supplies Columbus handlers the major part of their fluid milk. In recent years, the distributors in Fairfield County have paid dairy farmers shipping to their plants at the rate of the Columbus blend price.

The nine townships in Licking County recommended for inclusion in the marketing area comprise the two western tiers of townships of the county and are contiguous to Franklin and Delaware Counties. Some of these townships are no more than one-mile from the incorporated area of Columbus. This is the general direction in which the incorporated area of Columbus has been expanding most rapidly.

Columbus regulated handlers are the primary distributors of fluid milk in the recommended area of Licking County. They distribute more than 75 percent of the milk in Lima, Harrison, and Etna townships and more than 40 percent in Jersey and Monroe townships. Unregulated handlers have recently started competing in the proposed area of Licking County on the basis of cut-rate prices. The extension of regulation to this area will assist producers in retaining their present sales in this area by removing some of the incentive for handlers, not subject to full regulation, to cut prices on the basis of lower prices to dairy farmers or the disposition of surplus milk for fluid uses. No testimony was

presented in opposition to including these nine townships in the Columbus marketing area.

Delaware County is closely associated with the Columbus market in the distribution of milk. The milk requirements in the county are distributed by handlers regulated under the Columbus order, handlers regulated under the North Central Ohio order, and two local unregulated distributors. About 62 percent of the milk is distributed by the two unregulated distributors, about 26 percent by Columbus regulated handlers, and about 12 percent by handlers regulated under the North Central Ohio order. One of the unregulated distributors receives milk from 16 dairy farmers and the other one receives milk from five dairy farmers, including himself.

The distribution area of the unregulated distributors is limited to Delaware County. Routes from one of the local dairies, the larger one, cover the entire county without concentration in any particular area, except for the city of Delaware. More than 30 percent of the milk disposed of from this plant is disposed of in the city of Delaware, the primary center of consumption in the county. About 42 percent of the total population of the county and about 74 percent of the population in incorporated areas of the county are in the city of Delaware.

Columbus handlers distribute milk in 11 of the 18 townships in Delaware County. They distribute more than 90 percent of the milk in Orange and Berkshire townships, more than one-third of the milk in Delaware (the township in which the city of Delaware is located) and Trenton townships, about one-fourth of the milk in Genoa and Harlen townships, and less than one-fourth of the milk in each of the other five townships in which any distribution is made by them.

The inclusion in the marketing area of the townships in Delaware County where population associated with Columbus has increased significantly or where Columbus handlers are the principal suppliers of milk would result in full regulation of the Delaware distributors. These distributors are the principal suppliers of milk for the remainder of the county and their distribution areas are confined to the county. No other unregulated distributors disposed of milk in Delaware County. It is concluded, therefore, that the orderly marketing of milk will be promoted by including all of Delaware County in the Columbus marketing area.

The two local distributors opposed the extension of the marketing area to include Delaware County on the grounds that differences in the pricing and pooling provisions of the Columbus and North Central Ohio orders, with special reference to the price of milk used to produce ice cream, would jeopardize their positions in both the procurement and sale of milk in competition with handlers regulated under the North Central Ohio order. Both of these distributors pay producers for milk on the basis of the Columbus blend price and producer butterfat differential. A substantial proportion of the milk receipts of the larger of these two distributors is used to produce ice cream. The classification of his milk receipts in Class I and the other price classifications would be similar to that of the Columbus market, except a larger proportion of his receipts would be in Class III (includes milk used to produce ice cream) and a lower proportion in Class IV. This distributor was particularly concerned that, under regulation, he would be required to pay the Columbus Class III price for milk used to produce ice cream. Dairy farmers supplying these distributors with milk objected to including Delaware County because of the deductions which producers under the order are required to pay for marketing services rendered by the market administrator.

The performance of check testing and weighing of milk and the supplying of current market information is a valuable service in the interest of producers. The producers supplying milk to this plant would receive the marketwide blend price which reflects supply and demand conditions in this area and the same price as all other producers supplying the market.

Regulation of the Delaware county distributors under the Columbus order would not place them at an undue competitive disadvantage in the procurement and sale of milk. Dairy farmers supplying them with milk would be paid on the same basis as other producers under the Columbus order. The Delaware county plants compete for sales with Marion, Ohio, plants regulated by the North Central Ohio order. During 1957, the Class I price under the Columbus order was an average of only two cents per hundredweight more than the Class I price that would have been applicable under the North Central Ohio order at Marion, Ohio, had Marion been included in the North Central Ohio marketing area during the entire year. For 1957, the cost of the milk components (solids and fat) of ice cream was about equal, whether the milk from which they came was paid for at the rate of the Columbus blend price adjusted by the producer butterfat differential or at the rate of the Columbus Class III price.

Union, Oak Run, Fairfield, Jefferson, Canaan, and Darby townships in Madison county and Jerome township in Union county form the contiguous area of Madison and Union counties in which Columbus handlers make a substantial proportion of the fluid milk sales. These sales are significant to Columbus handlers. This area is contiguous to the areas of Delaware and Franklin counties recommended to be included in the Columbus marketing area. The main centers of consumption in the area are West Jefferson in Jefferson township, Plain City in Darby and Jerome townships and London in Union township. A Columbus regulated handler supplies more than 50 percent of the fluid milk sales in these towns through a broker whose primary distribution is in this area. He supplies more than 80 percent of the fluid milk requirements in Darby township, more than 50 percent in Jefferson and Union townships, more than 30 percent in Oak Run township and more than 20 percent of the requirements in Fairfield township.

An unregulated distributor from Fayette County may or may not become a fully regulated handler with the inclusion of the townships in Madison and Union Counties in conjunction with the pool plant requirements recommended herein. This handler supplies most of the milk in the recommended townships not supplied by handlers now regulated under the Columbus order. It was estimated that from 6 to 10 percent of his fluid milk sales are in these townships. An unregulated distributor from Marysville, Ohio, sells a very small amount of milk in Jerome township. The Fayette County distributor has a sales area of 10 or more counties including Madison and Union Counties, between the Columbus, Dayton-Springfield, Tri-State, and Cincinnati marketing areas. Three of the more important counties in his distribution area—Fayette, Ross, and Highland—are also his major procurement area. These counties are located outside the Columbus milkshed.

The competitive position of the Fayette County distributor would be relatively unchanged as a fully regulated handler under the Columbus order. During 1957 his milk costs were an average of 12–22 cents per hundredweight higher than the classification value of such milk calculated on the basis of minimum order prices. Participating in the Columbus pool would have little if any effect on his ability to continue the same relative rate of payment to his particular producers, because the proportions of his milk receipts that would have been classified in the different classes under the Columbus order were shown to be not significantly different from those proportions for the Columbus market. He, however, would be required to pay the 2 cents per hundredweight administrative assessment and his producers, who are not members of a cooperative authorized to perform marketing service, would pay the marketing service charge under the Columbus order.

The extension of the Columbus marketing area into Madison and Union Counties should be limited to the townships recommended above. Additional areas would include the less populous rural areas of the counties in which the volume of fluid milk sales is relatively small or areas in which unregulated distributors or handlers regulated under other orders are the primary suppliers of the fluid milk requirements. Unregulated distributors and handlers regulated under other orders are the primary suppliers of fluid milk in Union County, excluding Jerome Township. At least one unregulated distributor who sells milk in Union County, other than the distributor from Fayette County, is located outside Union County and does a more significant proportion of his fluid milk business in other areas.

All milk sold for fluid consumption in the recommended marketing area, with the possible exception of some of the townships of Licking County, must be graded milk. Plants, if any, handling milk for fluid disposition which is not

required to meet the ordinance requirements of a duly constituted public health authority for labeling as Grade A milk should not be subject to full regulation and such milk would not be pooled as producer milk under the order.

A proposal to include Fayette, Highland, Pickaway, and Ross counties in the Columbus marketing area and another proposal to include certain townships of Pickaway county were not supported at the hearing. These proposals are denied.

Adoption of the recommended marketing area would assure that all milk sold in this area is classified and priced to handlers on an equitable basis and that producers who are primarily responsible for supplying the fluid milk requirements of the area share in the proceeds from the sale of such milk on a uniform and equitable basis. Any competitive advantages, attributable primarily to buying milk at the Columbus order blend price, which distributors selling fluid milk in the area may have would be eliminated. This would provide the basic conditions necessary to promote stable and orderly marketing of producer milk. The recommended area is an integral part of the Columbus marketing area from the standpoint of milk distribution, and geographical location. The area decided upon is the minimum area that will accomplish the purpose of the regulation. The recommended area would include the major portions of the sales areas of all plants which would be fully regulated, except, perhaps, the plant located in Fayette county, and would keep to a minimum the number of partially regulated handlers.

2. The order should provide that, upon the request of a properly qualified cooperative association, such association shall receive proceeds due producer-members from the sale of milk.

The Central Ohio Cooperative Milk Producers proposed that handlers make payment for milk received from all producers to the market administrator at the class prices and he in turn pay cooperatives for members' milk and each nonmember producer for his milk at the marketwide uniform price. Under the present provisions of the order, handlers have the option of either paying all producers directly from whom they receive milk or paying the cooperative association for producer-members and paying nonmembers directly. In either case, payment is at the marketwide uniform price and any difference between these payments and the individual handler's utilization value for producer milk is equalized through the producer-settlement fund.

Members of the Central Ohio Milk Producers Association supply about 80 percent of the producer milk in the Columbus market. Under the association's contract with its members, it is the sole agent responsible for marketing their milk and is authorized to receive payment for such milk.

Because the cooperative association is responsible for marketing a substantial proportion of the producer milk on the market, the proper allocation of milk among handlers is of importance to the association. Achieving such an allocation, moreover, will aid in increasing returns to all producers for the total milk supply. The proper allocation of milk is a responsibility of, and to a considerable extent is within the power of, the association. In discharging its marketing responsibilities, it has been necessary in at least one instance for the association to divert milk for its own account to a nonpool plant, thus becoming a handler under the order. With the increasing number of bulk tank shippers in the Columbus market, it is expected that the cooperative will find it necessary to exercise its control over larger quantities of producer milk. The cooperative may realize a gain or loss on any diverted milk for which it is the handler, depending upon whether the price received is higher or lower than the particular order utilization price. The cooperative desires that any such gain or loss be distributed over all milk of its producer-members rather than only over the milk for which the cooperative becomes a handler. The cooperative's marketing function would be facilitated by providing for the cooperative to receive payment for all milk of its producer-members.

Most handlers in the market do not favor relinquishing payment directly to producers. However, contingent upon the cooperative association making payment to members, these handlers proposed certain mechanical changes primarily for the purpose of reducing the amount of work by handlers under the reporting and payment provisions. Handlers suggested that cooperative associations be required to make payment to producer-members on or before a specified date, that handlers have the option as to whether they pay nonmember-producers directly or through a third party, and that a provision be included in the order which would "save the handlers from harm" from any claims which may be lodged against them under State Law as a result of producers having been paid through a third party.

Handlers should be permitted to choose whether they will pay nonmember-producers directly or through the market administrator. In terms of the benefits to the market which may accrue as a result of a cooperative association making payment to their producer-members, it is a matter of indifference whether handlers make payment directly to nonmember-producers or through a third party. Handlers should also be relieved of as much detail in reporting as is consistent with accomplishing the purpose of the order, especially where such relief represents a net efficiency for the market.

The inclusion of "save harmless" language in the order would serve no purpose because the handler's obligation for milk under the order is fulfilled upon payment to the market administrator. Notice is taken of the fact that payment provisions under which handlers are required to make payment to the market administrator for producer milk have been in effect under the Cincinnati order for a number of years and that no claims outside of those arising under the order have been placed against handlers in that market as a result of the method of payments. It is also beyond the scope of the order to specify how or when cooperative associations are to distribute proceeds from the sale of milk for its members.

Provision should be made, therefore, for the market administrator to receive payment from handlers and to make payment to cooperative associations for producer-members' milk and to nonmember-producers for their milk. As opposed to handlers making payment directly to the association for member's milk and paying nonmember-producers directly, this procedure would provide an optional basis for handlers to pay nonmember-producers and would reduce the number of reports and calculations required of handlers, particularly by those who do not choose to pay individual nonmember-producers.

Under the recommended procedure, handlers would pay to the market administrator the classified value of all their milk, unless the handler receives producer milk from nonmembers for whom he has filed a request with the market administrator to make payment directly to such nonmembers. If such a request is filed the handler would be required to make payment to such producers at the uniform price, less properly authorized deductions and marketing service charges, on or before the date by which the market administrator would be required to pay nonmember-producers.

Provision should be made for proprietary handlers to continue deductions from the payments for the milk of association members for supplies or other products customarily supplied such producers. To facilitate the payment procedure, however, the responsibility for the authorization of transportation deductions and for assignments of money with respect to association members' milk should rest in the cooperative association.

The schedule for payments to producers under the fall production incentive payment plan and the method of distributing payments to producers under this plan should be changed.

Producers proposed adding the month of September to the months of October through December as the period for payment out of the producer-settlement fund to effectuate the fall production incentive program. They also proposed changing the distribution of these funds so that 20 percent of them are distributed in September, 30 percent in each of the months of October and November and the balance in December. Under the present provisions, one-third of the fund is distributed during each of the months of October–December. Another producer proposal would change the method of distributing this fund so that it is included in the uniform price rather than in a separate check.

Distribution of the funds under the fall production incentive payment plan in accordance with producers' proposal would tend to encourage a seasonal pattern of production more in line with market requirements and provide a closer seasonal alignment of producer prices with other nearby fluid milk

markets. September is one of the months when producer receipts are relatively short in relation to fluid milk sales and should be included in the period for payment under the fall incentive plan. The months of payment and the proportion of the funds which would be distributed during each month under the producer's proposal are nearly the same as for the nearby Dayton-Springfield market with which the Columbus market competes for milk supplies.

The success of any plan in encouraging a seasonal pattern of production more in line with market requirements depends to a large degree upon the publicity and educational programs which accompany such plans. The issuance of a separate check is not essential to the success of the plan. Adoption of producers' proposal for including payments under the fall incentive plan in the uniform price would result in certain efficiencies in making producer payments by eliminating the issuance of a separate check. It is concluded, therefore, that producers' proposal with respect to both the schedule of payments and the method of payments under the fall incentive plan should be adopted.

Provision should be made for payment of interest on overdue accounts. Such accounts include payments required of a handler or the market administrator to and from the producer-settlement fund and payments to producers for milk. They include payments required on milk sold in the marketing area by partially regulated handlers, and administrative assessment and marketing service payments. The lending of money, whether it be voluntary or involuntary, is an economic service for which the lender should be appropriately compensated, more particularly when the service rendered is involuntary. Furthermore, the requirement that interest be paid on overdue accounts will encourage prompt payments, thereby making for more efficient operations under the order. Dates on which accounts are due under the order allow adequate time for the payment of principal without an interest charge. It is concluded that one-half of one percent, compounded monthly, is an appropriate and economically sound payment for each month, or fraction thereof, that the account is overdue. Under this provision, any unpaid portion of an account would be increased one-half of one percent the first day after it is due. On the same day of each following month, any unpaid portion of the principal and of the interest would be increased one-half of one percent until they both are paid. A similar provision is in a number of Federal milk marketing orders.

One handler, the Ohio State University, objected to being subjected to the payment of interest on overdue accounts on the grounds that payments for milk are from State funds which are not customarily made in less than 2–3 weeks after a voucher is initiated. Such a lapse of time would result in the account of this handler being overdue. Exception is currently made to this practice by the State by permitting payment to producers with rural addresses out of petty cash in accordance with the terms of the order. However, any payment due producers through the producer-settlement fund, or any other payments due under the order to persons with other than rural addresses are delayed. Such an arrangement results in inequities in financing payments to producers and in financing services performed under the order. Furthermore, as the subject handler's utilization is higher than the market average only infrequently, the amount of money required to be paid to avoid overdue accounts would not be appreciably more than that currently paid out of petty cash. It is concluded, therefore, that this handler should not be excepted from the provision requiring payment of interest on overdue accounts. Such an exception would circumvent the intent of the provision.

3. The provisions with respect to the classification of milk transferred between pool plants and transferred or diverted from a pool plant to a nonpool plant should be modified.

Producers proposed that the transfer provisions be amended to assure that transfers between pool plants will not be used as a means of replacing producer milk in the higher priced uses with other source milk. They also proposed to change the method of classifying milk disposed of to a nonpool plant located less than 100 airline miles from the Ohio State Capitol in Columbus so that milk from Columbus pool plants would receive its proportionate share of any Class I milk at the nonpool plant along with transfers of milk subject to other Federal orders, and any Class II milk and Class III milk, after first crediting "Grade A" milk, supplied by dairy farmers constituting the regular source of supply for the nonpool plant, to the highest class utilizations at the plant and after crediting the "ungraded" milk received directly from dairy farmers to the highest utilizations other than Class I milk. Milk transferred to a nonpool plant located 100 airline miles or more from the State Capitol in Columbus would be classified as Class I milk.

The present transfer provisions operate to assure that transfers between pool plants will not be used to displace producer milk in the higher priced utilizations if other source milk is received only by the transferee plant. However, the present order does not specifically prevent transfers of milk between pool plants from being classified so as to result in other source milk being classified in a higher-priced class in the transferor plant and producer milk being classified in a lower-priced class in the transferee plant. The transfer provisions should not be so used to reduce the total quantity of producer milk in the higher-priced classes. It is concluded, therefore, that if either or both plants have other source milk, milk transferred between pool plants should be classified so as to allocate producer milk at both plants to the highest valued use classification. This provision would have the same effect as if the allocation provisions were applied to the combined utilization and receipts at the transferor and transferee plants.

Under the present provisions, transfers or diversions of milk to nonpool plants are classified as jointly claimed by operators of the transferor and transferee plants, provided an equivalent amount of milk is used in the claimed classification, regardless of the location of the nonpool plant. There are adequate manufacturing outlets for reserve supplies of producer milk located less than 100 airline miles from Columbus. Under prevailing conditions, movements of milk 100 miles or more will be for the purpose of supplying milk for fluid disposition and should be classified as Class I milk. Such an automatic classification is reasonable and will eliminate the possibility of undue expenditures in auditing the classification of transfers to distant nonpool plants.

The present transfer provisions would leave the way open for milk transferred to a nonpool plant located less than 100 miles from Columbus to be used in a Class I product and accounted for in a lower-priced class so long as an equivalent amount of milk is used by the nonpool plant in the lower class. Thus, in a combination plant, where both graded and ungraded milk is received, ungraded milk may be used in the lower-priced classes while milk from the Columbus market is used in Class I and the milk accounted for inversely in relation to its actual usage. Producer milk so accounted for returns to producers less than its classified value and at the same time gives operators of nonpool plants a competitive advantage over regulated handlers in common sales areas.

It is concluded, therefore, that the Class I sales of the nonpool plant which are in excess of receipts of Grade A milk from dairy farmers who are regular sources of supply for such plant should be credited to milk transferred to such plant from the regulated market. However, such Class I sales should not be used as a basis for duplicating the Class I classification of milk transferred to the nonpool plant from other plants regulated by this and other Federal orders.

It is reasonable that the amount of milk transferred to such plant and classified as Class I milk for any one regulated market be not less than the market's pro rata share of the net Class I sales in such nonpool plant. The pro rata share should be based on the total receipts of milk at such nonpool plant from all plants subject to the pricing and payment provisions of an order issued pursuant to the Act.

All milk disposed of from Columbus pool plants to nonpool plants which is not classified as Class I milk should be classified as Class II, Class III, or Class IV milk depending on the utilization and allocation of receipts of milk at such nonpool plant. In the case of Class II and Class III milk, receipts (both graded and ungraded) from local dairy farmers should be assigned to these utilizations prior to the assignment of milk transferred to such plant. This procedure would prevent the displacement of the milk of local dairy farmers in these preferred manufacturing uses and would

contribute to the orderly marketing of reserve supplies to nonpool plants.

The recommended method of classifying transfers and diversions of milk to nonpool plants would safeguard the primary functions of the transfer provisions of the order in promoting orderly disposal of reserve supplies and at the same time assure that transfers of milk to nonpool plants are classified in accordance with the utilization of the milk. It would provide a degree of protection to the market during periods of short supply which might be caused by withdrawals of milk. Any undue price incentive would be removed for pool plants to supply milk at less than the order Class I price to nonpool plants, engaged in multiple operations, for fluid disposition in other markets. Provision is made for equality of treatment of handlers both under the Columbus and other orders in the classification of milk transferred to a common nonpool plant.

Milk disposed of in eggnog and prepared milk shake mixes, including malt flavored mixes, should be classified as Class I milk (and included in the definition of a fluid milk product). Milk disposed of in eggnog is currently classified as Class II milk and milk disposed of in prepared milk shake mixes is classified as Class III milk.

Economic and marketing conditions which affect milk disposed of in eggnog and milk shake mixes are similar to those conditions which affect milk currently classified as Class I. The milk used to produce these products must be Grade A milk. Generally, these products are produced in the handler's fluid milk plant. They are distributed on retail and wholesale routes in a fluid or semi-fluid form. Along with fluid milk, they are consumed in fluid form. In relation to volume, they are relatively high value products. Milk used in eggnog and milk shake mixes can and should contribute as much to the cost of obtaining an adequate supply of Grade A milk for the market as milk disposed of in the present Class I products.

The classification provisions should be clarified by specifying that ending inventory of fluid milk products and sterilized cream are in Class I milk, that milk disposed of to commercial food manufacturers during the months of April through July is Class II milk, and that milk disposed of in ice milk is Class III milk. These are clarifying changes and would not change the present application of the order.

The shrinkage provision should be modified to prorate shrinkage between producer milk and other source milk received in the form of a fluid milk product. The present provision permits total shrinkage in a handler's plant to be prorated between producer milk and total other source milk in the plant. Such a proration amounts to an unreasonable shrinkage allowance on other source milk received in the form of a manufactured product, particularly since a skim equivalent basis of accounting is followed.

The order should contain more precise language with respect to accounting for manufactured products which are received in the plant during the month to specify that both receipts and utilization of such products are accounted for on a milk equivalent basis. Such a method of accounting is provided for in the present order by specifying a "used-to-produce" method of accounting in the class definition and in the paragraphs for computing the amount of milk in each class. However, a lack of uniform application throughout the accounting procedure of the skim equivalent method of accounting arising from the existing language has caused concern to handlers. The order should provide, therefore, that in accounting for the use or disposition of condensed or dried milk or skim milk, the whole milk or skim milk equivalent of such condensed or dried milk will be used.

4. The method of determining class prices should be changed so that the prices are announced for milk containing 3.5 percent butterfat with appropriate butterfat differentials. Under the present order hundredweight class prices are announced separately for skim milk and butterfat.

Milk prices are generally quoted throughout the dairy industry on a whole milk basis with butterfat differentials. Under the Columbus order, uniform prices to producers are computed and announced on a whole milk basis. Hence, under the recommended method of announcing class prices, Columbus order prices would be expressed in such a form as to facilitate comparisons with prices in other markets, both regulated and unregulated. Producers could more easily interpret their blend price in terms of the class prices to handlers.

Although a new system for calculating class prices per hundredweight for milk will be used, for convenience in computing handlers' costs, the use of separate class prices for skim milk and butterfat, reflecting the levels established by the prices per hundredweight of milk, will be continued.

Adoption of the recommended method of computing and announcing class prices would, of course, be a mechanical change and would not necessarily entail changes in the costs of butterfat and skim milk to handlers. However, butterfat differential levels for the various classes need to be revised to reflect more appropriate butterfat and skim milk values than exist under the present order. Class I and Class II butterfat values are determined now by applying the percentage that the value yielded by the butter element of a butter-nonfat dry milk formula is of the price yielded by the complete formula to the respective class prices computed for milk containing 3.5 percent butterfat. Skim milk prices are determined by the same method. Because the whole milk prices are comprised of the basic formula price, class differentials, and the supply-demand adjustment and because the butter element of the butter-powder formula at current price levels constitutes about 74 percent of the yield of the formula, relatively high butterfat and low skim milk prices result under the present order. Although there has been an upward trend in the total amount of butterfat disposed of in Class I milk, the proportion of the total butterfat from producer milk which is utilized in Class I milk has shown a downward trend. The trend in the proportion of skim milk from producer milk utilized in Class I, on the other hand, has been upward.

Expressed in terms of 92-score creamery butter at Chicago the Columbus Class I butterfat differential for 1957 was 0.157 and the Class II butterfat differential was 0.143 per one-tenth of one percent butterfat. Class I butterfat differentials under the Cleveland and North Central Ohio orders are 0.130 times the price of 92-score creamery butter at Chicago, and, under the Dayton-Springfield order, about 0.127 times the Chicago butter price. The Class I price for skim milk is relatively low in the Columbus market as compared with prices under other surrounding Federal orders.

It is concluded that the Class I and Class II butterfat differentials should be 0.0172 times the Class I price. Based on 1957 class prices and butter prices, such a differential is equivalent to a differential of about 0.131 times the Chicago butter price. The recommended Class I butterfat differential would, therefore, be in close alignment with the Class I butterfat differentials in nearby Federal order markets. Both Class I and Class II butterfat would share, to a degree, the additional value of Class I and Class II milk over Class III milk. Provision should be made to assure that the Class I and Class II differentials would not be lower, under any circumstances, than the revised Class III differential, which has been found to be at a reasonable level in relation to prices for Grade A butterfat from competitive sources. (The Class III price and butterfat differential are discussed under issue No. 5.) As compared to present butterfat and skim milk values, the recommended level of the butterfat differentials would reflect the increased demand for skim milk in fluid uses relative to butterfat. The method of expressing the butterfat differential in terms of the Class I price should be used so that both skim milk and butterfat would share in class price changes not associated with changes in central market prices for skim milk and butterfat. This would contribute a desired degree of stability in the relationship of skim milk to butterfat prices. Otherwise such changes as supply-demand adjustments would be reflected wholly in the price of skim milk.

The Class IV butterfat differential should be the Chicago butter price times 0.115. The butterfat differential computed on basis of the skim and fat prices of the present order is 0.112. Producers proposed that the differential be 0.120 times the Chicago butter price.

Evidence presented at the hearing is inadequate to form a basis for increasing the Class IV butterfat differential to 0.120 times the Chicago butter price. However, butterfat differentials in the manufacturing milk classes under the Cleveland and North Central Ohio orders are at the level of 0.115 times the Chicago butter price. Inasmuch as butterfat prices generally follow central market prices and there are adequate outlets for butterfat available in and near Columbus for the disposal of reserve butterfat for butter produced from sweet

cream, it is reasonable that the Class IV butterfat differential under the Columbus order be not less than those under the Cleveland and North Central Ohio orders.

The present formulas for computing hundredweight prices for skim milk and butterfat in Class IV milk yields prices, on the basis of milk containing 3.5 percent butterfat, approximately equal to the butter-nonfat milk formula used in the basic formula, minus 12 cents. To reflect the higher value for butterfat and to avoid descreasing the value of skim milk during the short production season as a result of the recommended butterfat differential, the Class IV price for milk containing 3.5 percent butterfat should be the price resulting from the butter-powder formula used in the basic formula minus 5 cents. As stated elsewhere in this decision, and particularly under a marketwide pool, the function of the pricing plan will be served best by maintaining the Class IV price at the highest possible level that will permit the orderly disposal of reserve supplies of milk and assist in allocating the total supplies among plants in accordance with the requirements in the higher valued uses. Accordingly, the proposal should strengthen the effectiveness of the order pricing plan.

Class prices for skim milk and butterfat are announced under the present order on or before the 10th day after the end of the month to which they apply. Hence, producers know the price they will receive for their milk and handlers know the price they will pay only after the milk is sold.

Even though formula prices and manufacturing milk prices on which the class prices are based are relatively constant on a month-to-month basis, the supply-demand adjuster may cause comparatively large short-run changes in the Class I and Class II prices under the recommended method of pricing. Data for computing the formula prices and the manufacturing milk prices used in class pricing under the order are available early enough after the end of the month to which they apply to permit announcement of the order prices on or before the 6th day after the end of the month. The supply-demand adjustment may be computed on the basis of producer receipts and utilization data for the 2d and 3d preceding months rather than the current and 1st preceding months, the monthly data now used in computing the supply-demand adjustment, without any significant loss of accuracy in predicting the current supply-demand situation in the market.

It is concluded, therefore, that Class I and Class II milk prices should be announced on or before the 6th day of the month and Class III and Class IV milk prices should be announced on or before the 6th day after the end of the month. Computation of Class I and Class II prices should be changed so that basic formula data used are for the immediately preceding month and supply-demand data used are for the 2d and 3d preceding months. However, the order should continue to specify that the Class II price is computed separately, rather than subtracting the constant amount from the Class I price. Even though the Class II price yielded by the two methods is the same under both the present and recommended orders, future consideration of either or both class prices may be expedited by retaining the separate computations.

A proposal was made at the hearing by producers to increase the Class I price differential. It was contended that the supply of producer milk during the low production season was extremely close to the requirements for fluid disposition. Although this is true as indicated by the analysis reported herein under Class III pricing, the supply-demand adjuster is for the purpose of increasing or decreasing Class I and Class II prices in accordance with the relationship of producer supply to the requirements of milk for fluid disposition. That the supply-demand adjuster is performing this function is shown by the fact that an average of 20 cents was added to the monthly class prices in 1957 and nearly 15 cents during the first 8 months of 1958. The supply of producer milk in relation to Class I sales during the first 8 months of 1958 was somewhat higher than for the corresponding months a year ago. It is concluded that the Class I price differential should not be changed.

The "standard utilization percentages" of the supply-demand adjuster should be revised to conform with the recommended change of computing the "current utilization percentages" and to conform with the changed seasonal pattern of producer milk deliveries for the Columbus market.

The supply-demand adjuster in the present order was made effective January 1, 1957. Standard utilization percentages adopted at that time were, of necessity, developed on basis of the historical seasonal pattern of producer receipts and Class I utilization for the market. During the past four years, a trend toward higher production in the months of October–December and lower production in the months of March–May has existed. Producer milk deliveries during the months of October–December have made up a higher proportion of the annual deliveries each year (October–September) than they made up during the preceding year. In 1954–1955, average daily producer receipts during these months were 91 percent of the annual daily average and in 1957–1958 the October–December average was 98 percent of the annual average. During the same four-year period a trend towards a lower seasonal production during March–May is present. In 1954–1955, daily average producer receipts during these months were about 111 percent of the annual daily average, and in 1957–1958 the March–May average was about 105 percent of the annual average. Official notice is hereby taken of the "Computation and Announcement of the Uniform Price", January 1957 through September 1958, issued monthly by the market administrator of Order No. 74.

This changed seasonal pattern of production, in conjunction with a relatively stable seasonal pattern of Class I utilization, has caused the supply-demand adjustment to be relatively higher during some of the flush production months of the spring as compared to the adjustments during the months of shorter production of the fall and winter. This, of course, works counter to the fall production incentive program for encouraging a more even seasonal pattern of production and in bringing market supplies more in line with fluid milk requirements. While it is not the purpose of the supply-demand adjuster to encourage a more even seasonal pattern of production, it should not work counter to such adjustments.

To avoid changing the level of the supply-demand adjustment, the level of the standard utilization percentages was adjusted, on the average, less than one-half of one percent. This adjustment compensates for changing the classification provisions to include milk used to produce eggnog and prepared milk shake mixes in Class I. Milk disposed of to food processors in bulk during the months of April through July, and which is Class I milk under the present order should continue to be included in the computation of the current utilization percentages.

A proposal to adopt a supply-demand adjuster under which the amount of the adjustment would be determined on basis of deviations of the current utilization percentage above or below a "minimum and maximum" standard utilization should be denied. One of the primary objectives of the proposal was to attain more stability in the adjustment. The primary difference in the "bracket method," i.e., the method used in the present order, for determining the supply-demand adjustment and the proposed method is that the bracket method is more effective in minimizing adjustments caused by random and short-run movements of the supply-demand relationship, which are not accounted for in the normal seasonal pattern. The evidence does not show that the proposal would do this as well as the present provision.

In view of the above stated considerations, it is concluded that the bracket method of determining the amount of the supply-demand adjustment should be retained. The following standard utilization percentages should be adopted:

Month for which a price is being computed:	*Standard utilization percentage*
January	127
February	129
March	126
April	124
May	125
June	130
July	141
August	160
September	156
October	137
November	128
December	130

These values take into account the existing seasonal pattern of production and the effect of classifying in Class I milk used to produce prepared milk shake mixes and eggnog. They also allow for some further leveling in the seasonal pattern of production. The recommended supply-demand provisions would

result in approximately the same average annual price adjustments over the long-run as would result under the present order.

In view of the relatively low Class I price differential under the Columbus order as compared with the differentials under several neighboring orders, particularly during the fall and winter months, the present provisions with respect to the pricing of milk disposed of in another marketing area should not be changed at this time.

Producer butterfat differential. The method of computing the producer butterfat differential should be changed. Under the present order, the producer butterfat differential is the weighted average of the Class II, Class III and Class IV butterfat differentials, as derived from the respective hundredweight class prices of skim milk and butterfat and weighted by the percent that producer butterfat classified in each of these classes is of the total producer butterfat in the three classes.

In view of the recommendation that the Class I and Class II differentials be reduced and brought in closer alignment with market values for butterfat, the proposal for a weighted average of the butterfat differentials in each of the four classes should be adopted. Changes in the relative proportions of the total butterfat in producer milk used in each class will be reflected in the producer butterfat differential.

Equivalent prices. Provision should be made for the use of an equivalent price if for any reason a price quotation required by the order for computing class prices or for other purposes is not available. A particular price quotation required under the provisions of the order may be discontinued or not available in the manner or at the time described by the order. Should such contingencies materialize, equivalent pricing would permit the intent of the pricing provisions of the order to be carried out without interruption until the order could be amended.

5. The pricing of Class III milk should be revised.

Class III milk is skim milk and butterfat used to produce frozen cream, condensed milk, ice cream mix, ice cream, sherbets and other frozen desserts. Class III milk is priced (on the basis of milk containing 3.5 percent butterfat) by adding 30 cents to the basic formula price during the months of April through July and 60 cents in other months. Class III milk prices for the months of August through March are increased or decreased by the same supply-demand adjustment as prices for Class I and Class II milk. Hundredweight prices for butterfat and skim milk are determined from the resulting 3.5 percent price by applying the ratio that the butter and skim milk solids values contribute to the alternative basic formula price computed from the open market prices of such products.

Certain handlers proposed that the application of the supply-demand adjustment be eliminated from the Class III price formula and the differentials over the basic formula price be changed to 10 cents for the months of April through July, 30 cents for the months of January, February, March, August and September and 40 cents for October through November.

Proponents alleged that a reduction in the Class III price is necessary to bring the costs of fat and solids for ice cream manufacture in alignment with the cost of ice cream ingredients made from Grade A milk from outside sources and to place manufacturers of ice cream using Columbus producer milk or ingredients manufactured therefrom on a competitive cost basis for ingredients with other Columbus distributors of ice cream.

Ingredients for ice cream distributed in Columbus must be made from Grade A milk. In addition to Columbus producer milk, approval has been granted by the Columbus Board of Health to certain plants which are approved to supply fluid milk to the Cleveland, Ohio, market as sources of supply for ice cream ingredients. Eight plants located in Ohio, Indiana, and Michigan have been approved either to distribute ice cream or to supply ice cream ingredients.

Ice cream is manufactured in the fluid milk plants of certain handlers. In other fluid milk plants, including one operated by the proponent for the reduction of the Class III price, condensed milk and cream are produced and supplied to ice cream plants which are not subject to regulation. Ice cream production has been discontinued in one of the proponent's fluid milk plants and a separate new plant has been established with a substantial increase in manufacturing capacity. Milk is not received directly from dairy farmers at the latter plant. This proponent has continued to receive in his fluid milk plant producer milk formerly needed for the ice cream operation.

This proponent stated that he did not intend to take on additional producers at his fluid milk plant to supply ice cream ingredients for the ice cream plant. From the capacity of the new plant it may be expected, however, that the output of ice cream will increase. Other markets also are supplied ice cream from this plant. There was no evidence to indicate a shortage of supplies of ice cream ingredients from Grade A milk from outside sources. With such supplies available, there is no urgent reason to provide a pricing scheme which in the long run will develop producer milk for the pool to supply the requirements for ice cream in this market and perhaps for other markets as well. With a given supply of producer milk, however, the returns to producers will be increased if reserve supplies of milk in excess of Class I and Class II requirements are disposed of as Class III rather than as Class IV milk. The problem is to establish a price for Class III milk which will be low enough to accommodate the use of reserve supplies in such class and be high enough not to encourage handlers to bring additional milk into the pool for uses in this class. Important also is the need to promote the allocation of available supplies of producer milk among handlers to meet their requirements for Class I and Class II uses.

The proponent indicated that the supply of producer milk at his fluid milk plant is gradually approaching a closer relationship to the Class I and Class II requirements. There was no evidence, however, to indicate that any reserve milk is readily available to other plants which may have need for it in Class I and Class II uses. The allocation of the available supply of milk to plants in accordance with their Class I and Class II requirements is in the interest of producers and the market in general. The pricing of Class III and Class IV milk at the highest level possible and yet permitting the orderly disposal of reserve supplies will assist in the proper allocation of milk and is the ultimate objective of the pricing plan.

Information was submitted by one of the proponents on the costs of cream and fresh condensed milk purchased by the ice cream plant from outside approved sources during 1957. Although this price information was available for limited quantities in some months, because of the relative stability exhibited in the figures from shipment-to-shipment and month-to-month, it is concluded that, on the average, these prices are reliable for use in the analysis which follows. Cream and condensed milk were purchased in bulk tank quantities delivered to the ice cream plant. Additional information was adduced at the hearing on yields of solids from skim milk, costs of receiving and processing skim milk, and container, storage and transportation costs for sweetened condensed milk. It was stated that 340 pounds of skim milk are used to produce 100 pounds of condensed milk containing 29.5 percent solids. Costs of receiving, separating, condensing of skim milk and transportation of the fresh condensed milk to the ice cream plant were equal to $1.14 per hundredweight of condensed milk. Three cents per pound of butterfat was presented as the cost of deriving pasteurized cream from producer milk. These figures result in a total cost of 44 cents per hundredweight for receiving producer milk with an average test of 3.8 percent butterfat and processing such milk into skim condensed milk and cream. These cost figures appear to be reasonable for appraising the Class III price with the cost of ice cream ingredients from outside sources.

The above mentioned data were used to compute milk, skim milk and butterfat prices for comparison with the present order prices. Application of these data resulted in a value for 3.5 percent butterfat content milk ranging from $3.65 to $3.68 during the months of April through July 1957 as compared with $3.48 to $3.49 under the present order. During the 8 months of January through March and August through December 1957 the computed prices fell within a range of $3.71 to $3.82 with an average of $3.76. Order prices ranged from $3.92 to $4.15 and averaged $4.04. In converting the prices of solids and fat from outside sources, no allowance was made for container or storage costs because the ingredients purchased were

in the form of cream and plain condensed skim milk delivered by tank truck.

The computed price of $3.66, for the months of April through July, was equal to 51 cents over the basic formula price of $3.15 during these months. The price of $3.76 computed for the remaining 8 months was equal to 54 cents over the basic formula price of $3.22. The present differentials under the order are 30 cents during April through July and 60 cents during the 8 months of, August through March. Therefore, the differentials contained in the present order result in prices for 3.5 percent milk which are 6 cents per hundredweight higher than the prices computed for the same test of milk from the solids and butterfat prices from outside sources during the August-March period, and 21 cents lower during the April-July period. In addition to the stated differentials, the Class III order price for 3.5 percent milk was increased by the supply-demand factor an average of 22 cents for the 8 months period August through March. No supply-demand adjustment is applied in other months. Under the present method of pricing, about 74 percent of the supply-demand adjustment is reflected in the Class III butterfat price and the balance, approximating 6 cents per hundredweight in 1957, in the price of skim milk.

The average price computed for skim milk for the 8 months of January through March and August through December, 1957 was $1.14 per hundredweight. This was 4 cents higher than the average Class III price for skim milk under the order for the same period. During the months of April through July, the order price for skim milk averaged 95 cents per hundredweight while the equivalent price for skim milk from solids purchased from outside sources was equal to $1.10 or 15 cents higher than the order price.

The "Computation and Announcement of the Uniform Price", January 1957 through August 1958, of which official notice has been taken, supplements the summaries in the record showing receipts and utilizations of skim milk and butterfat by classes. During the previously stated 8-month period of 1957, 92 percent of the skim milk contained in producer milk was utilized marketwide in Class I and Class II milk. In addition, between 1 and 2 percent of total receipts represented plant loss. The remaining 6 to 7 percent of the skim milk in producer milk was utilized in nearly equal amounts in Class III and Class IV milk. Therefore, the opportunity for shifting of the utilization of reserve supplies of skim milk from Class IV to Class III and increasing the returns to producers during the period of August through March is rather limited. During the months of April through July of 1957, approximately 80 percent of the skim milk contained in producer receipts was utilized as Class I and Class II milk. Of the remaining 20 percent, approximately two-thirds was utilized in Class III milk and one-third in Class IV milk. During these same months of 1958, however, approximately two-thirds of the skim milk utilized in Class III and Class IV milk was utilized in Class IV while one-third was utilized in Class III. Sweetened condensed milk was produced for storage in 1957 by one proponent whereas this was not the case in 1958.

On the basis of the container and storage costs placed in the record, it would be necessary to reduce the Class III skim milk price to the same or even a lower level than the Class IV price in order to result in a cost of solids from stored sweetened condensed milk no higher than the cost of solids in fresh condensed milk purchased from outside sources at the time of use. A reduction of the Class III skim milk price to the Class IV level during the summer months would reduce the total returns to producers. The pricing of skim milk to afford solids at a competitive level with solids from outside sources should make possible use of reserve supplies of milk for current requirements in Class III rather than in Class IV milk. The potential demand locally for ice cream ingredients is sufficient to utilize the present market reserves of Grade A skim milk on a current basis. The pricing arrangement for skim milk should make possible the orderly disposal of reserve supplies over Class I and Class II requirements, afford maximum returns to producers and at the same time not encourage the development of additional producer milk as a source of solids for ice cream manufacture.

It was proposed to change the seasonal pattern of Class III pricing to provide three levels of pricing instead of two. The present seasonal price system for skim milk and butterfat results in a reasonably uniform relationship with the corresponding computed costs of skim milk and butterfat from outside sources. There appears to be no need for changing the present seasonal pattern of Class III prices.

It is concluded, therefore, that prices for skim milk should be changed to reflect a cost for skim solids in close alignment with the cost of solids from outside sources. To accomplish this in conjunction with the butterfat differentials (recommended herein) the Class III differentials should be 50 cents during April through July and 55 cents during August through March. In order to continue the appropriate relative levels and seasonal pattern of skim milk prices under a system of pricing with butterfat differentials, where the price for skim milk is a residual value, the order would need to be changed to apply 26 percent, previously shown, of the Class I and Class II supply-demand adjustment to the price for Class III milk. There is no sound reason to provide that the basic Class III price level be decreased if the supply-demand ratio should result in negative adjustments.

On the basis of the 1957 level of supply-demand adjustment of 22 cents, an increase in the average level of producer milk receipts in relation to Class I and Class II sales, could reduce the relative level of the Class III skim milk price a maximum of 5.7 cents per hundredweight. To the extent the price is reduced with increased supplies of milk in relation to Class I and Class II sales, handlers would have some incentive to use more milk in Class III uses. A reduction of more than this amount would result in prices too low in relation to costs of solids from outside sources. Even the possibility of a greater reduction in skim milk prices in conjunction with the butterfat differentials recommended herein, might cause handlers to expand Class III operations through the development of additional supplies of producer milk. It is concluded, therefore, that 26 percent of any plus adjustments (only) of the supply-demand adjustment should apply to Class III milk.

The present method of determining hundredweight prices for butterfat on the basis of the proportion of the total value that butter contributes to the butter-skim milk solids formula price should be changed. It has been decided elsewhere in this decision that class prices should be announced for 3.5 percent milk with appropriate butterfat differentials.

The Class III price for butterfat is lower during the months of April through July and considerably higher during other months of the year than prices for alternative supplies of butterfat from Grade A sources.

The order price per hundredweight of butterfat in the months of April through July 1957 averaged $73.36 in contrast with a comparative net cost of butterfat in the form of cream from outside sources of $74.36 (after an allowance for the value of solids in cream and a processing cost of 3.0 cents per pound of fat). During the months of January through March and August through September of 1957, the order price for butterfat was $84.93 per hundredweight as compared to a computed price of $76.02 from outside sources.

Some of the effects of this pricing arrangement are reflected in the utilization of the butterfat from producer milk. During 1957, nearly 20 percent of the butterfat contained in producer milk was utilized in Class III and Class IV milk. During the months of April through July the ratio was 27 percent and in other months 17 percent. Of the 27 percent used in Class III and Class IV milk during the April–July period (when butterfat prices from Class III milk were relatively low), about three times as much fat was used in Class III milk as in Class IV milk. This was in contrast to utilization in the other 8 months of the year when Class III butterfat prices were relatively high and 4 times as much butterfat was used in Class IV as in Class III milk. Because the reserve supply of butterfat in relation to Class I and Class II needs is relatively larger than for skim milk and because of the higher proportion of butterfat now being used in Class IV milk, the possibility of increasing the returns to producers from increased sales of butterfat in Class III milk is potentially much greater than for skim milk.

The present pricing arrangement for Class III milk is equivalent to applying, on the basis of 1957 prices, a butterfat differential equal to the price of 92-score butter at Chicago times 0.140 during the months of August through March and

0.122 during the months of April through July. The present prices for butterfat fail to reflect competitive prices for butterfat in Grade A cream from outside sources both as to level and seasonal pattern. Prices for butterfat in the Grade A cream purchased from outside sources bears a fairly constant relationship to central market prices for butter. The unadjusted prices reported were between 129 to 130 percent of the price of 92-score butter at Chicago during 8 months of 1957 and averaged 129.7 percent for the year. Prices during October, November and December were above this average and during April, May and July such prices were below the average.

The application of the computed hundredweight prices for skim milk and butterfat from outside sources results in butterfat differentials equivalent to 0.124 times the price of 92-score butter at Chicago for the months of April through July and 0.126 times such price during other months of the year. It is concluded that these ratios should be adopted as the butterfat differentials for adjusting 3.5 percent prices for Class III milk. These differentials together with those recommended for Class I and Class II butterfat will bring the value of butterfat in all three classes for which Grade A milk is required in much closer alignment both with respect to annual level and seasonal changes. These recommended changes should encourage greater utilization of the available supplies of butterfat from producer milk in the higher priced classes. The general level of butterfat differentials also will be more nearly in accord with corresponding butterfat differentials in other Ohio markets.

6. A schedule of location adjustments applicable to milk received at pool plants should be established in relation to the distance the plants are located from Columbus.

The present order provides a location adjustment of 17 cents per hundredweight on all whole milk moved directly to the marketing area from a fluid milk plant located more than 40 miles from Columbus. Under these provisions, class prices and uniform prices to producers at fluid milk plants located at appreciably greater distances from the marketing area would be the same as class prices and uniform prices at plants located just outside the 40-mile radius.

Milk at farms or at plants has a progressively lower value with respect to the Columbus market as such farms or plants are located farther from the market. The difference in value is related to the cost of transporting the milk from the respective locations to the market. Even though at the time of the hearing, there were no plants at which location adjustments would apply, the order should contain appropriate provisions to recognize such difference in value at pool plants, particularly in view of the recommended changes in the marketing area. Such a provision would provide a cost of milk among plants and returns for milk among producers in accordance with its economic value to market, if plants located at greater distances become associated with the market. This should be accomplished by a schedule of location adjustments applying at plants in accordance with their location in relation to Columbus.

A rate of 1.5 cents for each 10 miles that milk is moved from a supply plant or a distributing plant to the marketing area should be the basis for extending the location differentials. The rate approximates the cost of moving milk such distances to the marketing area from distant points by efficient means and conforms closely to the rate applied under other Federal orders. The rate should apply only at plants located more than 90 miles from Columbus and should be in addition to the amount of the adjustment to plants located in the 80–90 mile zone. Plants located 80 but less than 90 miles from Columbus should receive a fixed differential of 15 cents per hundredweight of milk to which location differentials apply. No location adjustment should apply at plants located less than 80 miles from Columbus. This is appropriate for the Columbus market because of the relatively low Class I price differential under the order as compared to differentials in orders for nearby markets. It also recognizes the location of plants which may become regulated as a result of the recommended expansion of the marketing area. It would provide a maximum degree of uniformity in Class I prices at plants under this and other orders which have common sales areas.

Such location adjustment should apply to all milk moved to the marketing area from supply plants in the form of a fluid milk product which is assignable to Class I and Class II milk after first assigning direct receipts from producers, receipts of fluid milk products and Class II products from other pool plants, located less than 80 miles from Columbus, to the available Class I and Class II utilization at the plant to which the milk is moved.

The location adjustment provisions should also be expanded to apply to all milk disposed of as Class I and Class II milk from a pool plant located more than 80 miles from Columbus. Such applications of the location adjustment would recognize the functional relationship of supply plants to the market and price Class I and Class II milk at all pool plants in relation to its value for consumption in the marketing area.

7. New definitions of "cooperative association", "fluid milk product", "pool plant", "nonpool plant", "producer-handler", "Chicago butter price," and "nonfat dry milk price," should be added to the order to facilitate drafting other provisions of the order and to clarify their application.

Definitions for "fluid milk product", "cooperative association", "Chicago butter price", and "nonfat dry milk price" should be provided to eliminate the necessity for repeating language each time reference is made to one of these terms. A fluid milk product should be defined to include the same milk and milk products as are included in Class I milk, thus making the definition useful as a specialized reference in other sections of the order—particularly the reporting and accounting sections.

The definition of a pool plant and a producer-handler should be added and the definition of a fluid milk plant changed to describe more clearly the different categories of persons and plants subject to the order, according to the type or degree of regulation applicable to each.

A fluid milk plant should be defined to include any plant which performs as either a distributing plant or a supply plant for the marketing area. Under the present definitions, a fluid milk plant is subject to the full regulation of the order. Any plant engaged in the receipt and processing of milk may become a fluid milk plant by disposing of any milk on a route in the marketing area. A pool plant should be defined as a fluid milk plant which meets certain minimum performance requirements. The term pool plant should include those plants which would be subject to full regulation. It is especially important that certain performance requirements be specified, in view of the recommended extension of the marketing area. This is to avoid dissipating the price differential necessary to encourage the production of an adequate supply of Grade A milk for the market, on the one hand, and to avoid fully regulating plants which are not primarily associated with the Columbus market on the other hand. Full regulation should be extended only to those plants primarily engaged in the fluid milk business. Full regulation should not be extended to those plants having only an incidental amount of sales in the marketing area. It is concluded that a distributing plant should be a pool plant if not less than 50 percent of the Grade A milk received from producers and other plants is disposed of in Class I and Class II milk and more than 15 percent of such receipts are disposed of on routes in the marketing area. The 15 percent requirement would exempt from full regulation those plants having only incidental sales in the marketing area, as recommended to be expanded.

A fluid milk plant which performs as a supply plant should be a pool plant if not less than 50 percent of the producer receipts at such plant are moved to a distributing plant which is a pool plant. If a supply plant has met the shipment requirements during the immediately preceding period of August through November, such plant should be a pool plant during the months of March through July, unless the operator of the plant files a request for nonpool plant status with the market administrator by March 1 prior to such period. This would provide a reasonable and equitable pooling arrangement for those producers who ship milk to a supply plant which furnishes milk to the marketing area primarily during the fall and winter months when direct shipped milk is more likely to be inadequate to fulfill market needs.

Except for the plant operated by the Ohio State University, the recommended definition of a pool plant would include all plants included by the present definition of a fluid milk plant. Fluid milk distributed from the Ohio State University plant is limited to routes operated on the Campus. During months when

school holidays and vacations occur, particularly the summer months, the proportion of receipts at the plant utilized in Class I and Class II frequently is less than 50 percent. During other months the utilization is relatively high. Inasmuch as routes from this plant are not operated primarily in competition with routes of other handlers, partial regulation should not be applied to the plant or full regulation merely on a seasonal basis. On the other hand, a low utilization at the plant should not be permitted to dilute the Columbus pool on a permanent basis. It is concluded, therefore, that the 50 percent Class I and Class II requirement for pool plant status should apply only during the months of January, February, October and November to a plant from which routes service only the Ohio State University Campus. This is in accord with the historical pattern of utilization in this plant.

A producer-handler should be defined to include any person who processes milk from his own farm production and distributes any portion of such milk on routes in the marketing area, but who receives no fluid milk products from other dairy farmers or nonpool plants. The milk production, processing and distribution should be the personal enterprise, and at the personal risk of such person. In the present order, a producer-handler is included under the definition of a producer. Receipts of milk from a nonpool plant are not precluded as a basis for maintaining a producer-handler status and the nature of the operation is not described. A producer-handler is only subject to partial regulation in that he is required to make reports, at the request of the market administrator, for the purpose of determining his status under the order. He is exempt from all payment, pricing, pooling and classification provisions of the order. Adoption of the recommended definition is necessary, therefore, to assure that such a person will not use his exempt status under the order as a means of expanding Class I sales from other than his own production or transfers from pool plants, thus displacing sales of producer milk by fully regulated handlers.

The definition of a producer and producer milk should be changed to generalize the reference to "health authority" and to specifically deal with diverted milk. Under the present definition, producer milk must be produced under a permit issued by the appropriate health authorities in the marketing area. Since, under this definition, the method used by the health department to evidence approval of a dairy farmer to supply milk to the marketing area may determine whether or not such dairy farmer is qualified as a producer under the order and since it is not the purpose of the order to enforce health department regulations, the reference to "health authority" should be changed so that the determining factors are that the dairy farm be approved by a duly constituted health authority and that the responsible health authority in the marketing area permit the milk to be labeled and disposed of as Grade A milk in the marketing area. The portion of the definition of a producer which provides for including dairy farmers not holding a permit issued by a health authority in the marketing area is no longer needed as a part of the definition.

The present order permits the diversion of producer milk to a nonpool plant by a cooperative association and diversion by proprietary handlers to pool plants. The privilege of diversion accommodates the movement of milk between pool plants and the economical disposal of reserve supplies of milk.

Producers contended that provision for diversion of producer milk by proprietary handlers to nonpool plants is unnecessary except during the months of seasonally high production of April, May, June and July. In view of the fact that proprietary handlers will be required, as set forth later, to notify the cooperative prior to diversion of the milk of producer-members, proprietary handlers should be permitted to divert milk to nonpool plants during all months of the year. This will facilitate the orderly disposal of any reserve milk which at times may be accumulated on weekends or as a result of decreased fluid sales over holidays. There is no sound reason, however, to permit continuous diversion to nonpool plants either by the cooperative association of proprietary handlers in months other than those in the seasonally high production period. It is concluded, therefore, that unlimited diversion of producer milk should be permitted during April through July. During other months, the total monthly deliveries of milk of a dairy farmer whose milk is diverted on more than one-half of the days of delivery during the month should not be producer milk under the order.

Producers proposed that proprietary handlers be required to give the association not less than 24 hours notice before diverting milk of producer-members to a nonpool plant. Under the proposal, this would be a requirement for diverted milk to qualify as producer milk and for the dairy farmer to qualify as a producer. Prior notice would facilitate the cooperative's efforts to divert producer milk to the highest-priced uses possible and would expedite its program for check testing and weighing members milk. With the relatively narrow ranges of variation in producer receipts and fluid milk sales on a day-to-day basis, the requirement of a 24-hour notice, prior to diversion, would not seriously impair the production planning of handlers. The requirement of a 24-hour notice prior to diversion should be adopted. However, the requirement should be in the form of a report from the handler to the cooperative association rather than as a part of the producer milk definition. In this form, failure to comply with the requirement by the handler within the specified time would not prevent the pooling of the diverted milk and would remove the need for exact administrative determination of the time element.

The definition of other source milk should be clarified and changed to accommodate the proper accounting for and allocation of milk, particularly milk and butterfat in manufactured products accounted for on a "used-to-produce" basis which are used or reused during the month. This definition should include all receipts during the month in the form of a fluid milk product, except (1) receipts from producers, (2) receipts from other pool plants and (3) inventory of fluid milk products on hand at the beginning of the month. It should also include all manufactured products which are reprocessed or repackaged in the plant during the month, except Class II and Class III products received from pool plants.

Adoption of the recommended definition would clarify and simplify the accounting procedure under the order. The new definition used in conjunction with the allocation provisions and the provisions for computing pool obligations of handlers would provide for the automatic reclassification of skim milk and butterfat in all Class IV products and in Class II and Class III products from nonpool plants which are reused in a higher-priced class during the present or a later accounting period. Employment of this definition would make it unnecessary for the market administrator to follow such products to determine the classes in which they are ultimately used. Segregation of Class IV products in handlers' plants by those coming from pool plants and those coming from nonpool plants would no longer be necessary. To avoid double accounting for producer milk which is used in a Class II or Class III product in a pool plant and which is reprocessed in the same plant or transferred to another pool plant, it is necessary to exclude such products from the other source milk definition. Such products should continue to be accounted for by the procedure currently followed.

With the adoption of the recommended definition of other source milk, all milk in a pool plant would be accounted for on the basis of one of the following five specific categories of milk:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Products specified in Class II and Class III milk from pool plants which are used or reused in another product in the plant during the month;

(4) Other source milk; and

(5) Beginning and ending inventories of fluid milk products.

The allocation provisions should be redrafted in terms of the five categories of milk and to eliminate separate allocation of other source milk received under an emergency permit. The Columbus market has been adequately supplied with producer milk for a number of years. The provision in the present order for allocating emergency other source milk on a pro rata basis is contrary to the accepted principle of allocating producer milk to the highest-priced classes. No distinction should be made between so-called emergency other source milk and any other source milk.

With the exception of the elimination of the provision for emergency other source milk, the recommended allocation

procedure does not change the sequence of allocation from that followed in the present order. Handlers costs for producer milk would be essentially the same as under the present order. The recommended changes will provide equal treatment of other source milk (as redefined) regardless of source. Thus, other source milk in the form of a Class IV product from pool plants will be allocated in the same manner as such products from outside sources. Any reclassification of such products will automatically result from the allocation procedure and will depend on the availability of an equivalent amount of producer milk in the pool plant in the current month. This will promote equality in the cost of milk among handlers regardless of the source of such products.

The provisions for computing the amount of skim milk and butterfat in each class and handler's obligations should be redrafted to incorporate conforming changes and standard order language.

Producers proposed that the duties of the market administrator be changed so that the monthly report of the utilization of producer milk, in each class by each handler be transmitted, upon request, directly to cooperative associations and to operators of pool plants, rather than through a public announcement. The proposal would also require reports and such changes in percentages as are revealed by the regular audit of the market administrator. Cooperatives and operators of pool plants are the parties most directly concerned and in a position to make marketing decisions on the basis of such data. It is reasonable that such parties have the audited data made available to them. The provision should be changed so that the market administrator will make such information available to the public by posting in his office.

Payments by nonpool plants. Under the present order, all distributing plants which dispose of a fluid milk product on routes in the marketing area are subject to full regulation. With the recommended requirements for pool plants, a plant could dispose of significant quantities of fluid milk in the marketing area and not be a pool plant. In fact, almost 50 percent of the Grade A receipts of a plant could, under certain circumstances, be disposed of as Class I products in the marketing area and the plant be a nonpool plant.

Milk is distributed in some parts of the marketing area, as recommended to be expanded, from plants at which reserve supplies are available at prices not higher than the Columbus Class IV price or at which the alternative disposition of the reserve supplies is to manufacturing outlets. At other plants, prices paid dairy farmers are equivalent to or more than the utilization value of their milk, if it were subject to full regulation.

Partially regulated nonpool plants should not have a competitive advantage in the sale of milk in the marketing area over fully regulated plants. It is appropriate, therefore, that the nonpool distributors of milk have the choice of paying into the producer-settlement fund either the difference between the Class I and Class IV price on their sales on routes within the marketing area or any amount by which such operator has failed to pay his Grade A dairy farmers the classification value of their milk at order prices.

Handlers operating nonpool fluid milk plants are required to file such reports as will enable the market administrator to verify their nonpool status. Under the second option described in the preceding paragraph (that of making payment to dairy farmers), the operator of the nonpool plant would file a complete report of receipts and utilization. From such reports, subject to audit, the value of his milk would be computed at the class prices adjusted for location and butterfat content in the same manner as for a pool plant. From this utilization value, the market administrator would subtract cash payments to the Grade A dairy farmers who constitute the regular supply of milk at the nonpool plant. Only such payments would be recognized as had been made to such farmers by the 18th day following the end of the month. The payments would be the gross amount paid to such farmers for milk at the nonpool plant. The only deductions allowed would be those authorized in writing by the dairy farmer for supplies or services including hauling.

The nonpool plant may receive milk from other plants rather than directly from dairy farmers. If the other plant serves primarily as a receiving station for the nonpool distributing plant, all receipts and utilization of milk at both plants can be reported to determine whether or not the dairy farmers have been paid the equivalent of order prices at such nonpool plants. In such instances, the milk of such dairy farmers and any other source milk would be allocated in the same fashion as if the nonpool plant were a pool plant.

The operator of the nonpool distributing plant will be required to pay to the producer-settlement fund any amount by which the amount paid the dairy farmers, who constitute his regular source of supply, fails to equal the utilization value of the milk under the order. In this manner, the operator of the nonpool plant would be fully equated so far as the utilization cost of his milk is concerned with the pool plant operator.

The use of this option in this market will not preclude maintenance of orderly marketing conditions or provide an advantage to the operators of nonpool distributing plants over fully regulated handlers in the procurement of milk supplies. Nearly all of the milk received at such nonpool plants is procured outside of the procurement areas of the handlers to be fully regulated. The extent to which dairy farmers only incidentally associated with the market will share in the revenue derived from Class I sales in the marketing area will not significantly dissipate the returns to pool producers of milk for which minimum class prices are established under the order and who are relied upon to produce an adequate and dependable supply of approved milk for the marketing area. Consequently, the exercise of this option should not have a disruptive influence on the handling of milk in this area.

The option of paying the difference between the Class I and Class IV prices on the quantity sold as Class I in the marketing area should also be available to any handler operating a nonpool plant. Such payment will remove any competitive sales advantage in the marketing area as compared with fully regulated handlers and is necessary to retain the integrity of the regulation in the event such plants do not exercise the other option.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects to pay the difference between the Class I and Class IV prices on his in-area sales he should be required to pay administrative expense only on such quantities. However, if he elects the payment based on the utilization value of his milk, he should pay administrative expense on his entire receipts from Grade A dairy farmers and other receipts in the form of a fluid milk product the same as fully regulated handlers. Obviously, the second option involves fully as much verification of the receipts and utilization at such a plant by the market administrator as at a pool plant. Such verification might well include the checking of weights and butterfat tests of receipts from dairy farmers and of the product sold, as well as, a complete audit of the books and records for such plants.

Administrative assessment. The provision for administrative assessment should be changed to conform with changes recommended in the accounting procedures and to provide for assessments on milk disposed of in the marketing area by partially regulated plants, as previously discussed. The present administrative assessment is two cents per hundredweight on all producer milk and other source milk at a fluid milk plant. The language should be changed to exclude from assessment other source milk received at a pool plant in forms other than fluid milk products. This would avoid placing the assessment on the milk equivalent of manufactured products and double assessment on milk used to produce such products if made from producer milk and reused in the pool plant. The proposed change to place administrative assessment on fluid milk products only, would provide an equitable basis for assessment among pool plants in this market. This same rate of administrative assessment should be made at partially regulated plants, as previously discussed. The present assessment not to exceed 2 cents per hundredweight is reasonable and will provide adequate funds for administering the order for the enlarged marketing area.

Provision should be made for excluding from regulation under the Columbus order any plant which is subject to the classification and pricing provisions of another Federal milk marketing order and from which a greater volume of fluid milk products is disposed of on

routes in the marketing area and to plants subject to full regulation under such order than is disposed of in the Columbus marketing area on routes and to pool plants during the current and each of the three immediately preceding months. Such a provision would clarify under which order a plant which sells milk in more than one marketing area is to be regulated, and thereby avoid the possibility of dual regulation. Use of the four-month period as a criterion would reduce the possibility that plants which supply nearly equal amounts of milk to the Columbus market and to other markets would be subject to different orders from month to month.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Columbus, Ohio, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Columbus, Ohio, Marketing Area", which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order amending the order regulating the handling of milk in the Columbus, Ohio, marketing area, is approved or favored by the producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of January 1959 is hereby determined to be the representative period for the conduct of such referendum.

Fred W. Issler is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders, as published in the FEDERAL REGISTER on August 10, 1950 (15 F.R. 5177), such referendum to be completed on or before the 20th day from the date this decision is issued.

Issued at Washington, D.C., this 25th day of February 1959.

[SEAL] CLARENCE L. MILLER,
Assistant Secretary.

Order[1] Amending the Order Regulating the Handling of Milk in the Columbus, Ohio, Marketing Area

AUTHORITY: §§ 974.0 to 974.92 issued under sec. 5, 49 Stat. 753, as amended, 7 U.S.C. 608c.

§ 974.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Columbus, Ohio, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interestate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 2 cents per hundredweight, or such amount not to exceed 2 cents per hundredweight as the Secretary may prescribe, with respect to all receipts of producer milk and other source milk received in the form of a fluid milk product at a pool plant and with respect to a fluid milk plant which is a non pool plant in accordance with § 974.63 (a) or (b).

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Columbus, Ohio, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

DEFINITIONS

§ 974.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 974.2 Department.

"Department" means the United States Department of Agriculture or such other Federal agency authorized to perform the price reporting functions specified in this part.

§ 974.3 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 974.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 974.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 974.6 Columbus, Ohio, marketing area.

"Columbus, Ohio, marketing area" hereinafter referred to as the "marketing area" means all territory including but not being limited to all municipal corporations and institutions owned or operated by the Federal, State or local Government, or portions thereof, in: Franklin County; Delaware County; Fairfield County, excluding the townships of Clear Creek and Amanda; Hartford, Monroe, Jersey, Lima, Etna, Bennington, Liberty, St. Albans, and Harrison townships in Licking County; Union, Oak Run, Fairfield, Jefferson, Canaan, and Darby townships in Madison County; and Jerome township in Union County; all in Ohio.

§ 974.7 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, concentrated milk, milk drinks (plain or flavored including prepared milk shake mixes and eggnog), cream (including sterilized cream), or any mixture in fluid form of milk, skim milk or cream (except storage cream, aerated cream products, ice cream mix, evaporated or condensed milk and sterilized products packaged in hermetically sealed containers).

§ 974.8 Route.

"Route" means a delivery (including a sale from a plant store) of a fluid milk product(s) to a wholesale or retail stop(s) other than to a milk plant(s) or to a food processing plant(s) for use other than for fluid consumption.

§ 974.9 Fluid milk plant.

"Fluid milk plant" means a plant or other facilities which are used in the receipt, preparation, or processing of milk which is approved by a duly constituted health authority for fluid disposition as Grade A milk and all or a portion of such milk is:

(a) Disposed of during the month in the form of a fluid milk product(s) in the marketing area on a route(s); or

(b) Moved to a plant described in paragraph (a) of this section in the form of a fluid milk product(s).

§ 974.10 Pool plant.

"Pool plant" means any fluid milk plant meeting the conditions of paragraph (a) or (b) of this section, except a plant operated by a producer-handler:

(a) Any fluid milk plant from which the volume of Class I milk disposed of on a route(s) and Class II milk is equal to not less than 50 percent of the Grade A milk described in § 974.12(a) received at such plant from dairy farmers and from other plants during the month and more than 15 percent of such receipts are disposed of as Class I milk on routes in the marketing area: *Provided,* That the 50 percent requirement of this paragraph shall apply only during the months of January, February, October and November to a fluid milk plant which operates routes all of which service only the Campus of Ohio State University, Columbus, Ohio; or

(b) Any fluid milk plant which receives milk from dairy farmers described in § 974.12(a) and from which fluid milk products equal to not less than 50 percent of the milk received at such plant from such dairy farmers during the month is moved to a plant(s) described in paragraph (a) of this section: *Provided,* That if such shipments are not less than 50 percent of the receipts of milk from such dairy farmers at such plant during the immediately preceding period of August through November, such plant shall, unless written application for nonpool plant status is received by the market administrator from the operator of such plant on or before March 1 of any year, be designated as a pool plant for the months of March through July of such year.

§ 974.11 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing, or bottling plant other than a pool plant.

§ 974.12 Producer.

"Producer" means any person, except a producer-handler, who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is:

(a) Permitted by the health authority having jurisdiction in the marketing area to be labeled and disposed of as Grade A milk in the marketing area; and

(b) Received during the month at a pool plant or diverted from a pool plant to another pool plant or to a nonpool plant pursuant to the conditions set forth in § 974.13.

§ 974.13 Producer milk.

"Producer milk" means skim milk and butterfat contained in milk: (a) Received at a pool plant directly from producers; (b) diverted for the account of the operator of a pool plant to another pool plant; or (c) diverted during the month to a nonpool plant for the account of a cooperative association or the operator of a pool plant: *Provided,* That producer milk diverted shall be deemed to have been received at a pool plant at the same location as the pool plant from which it is diverted; *And provided further,* That this definition shall not include the milk of any person during any

of the months of August through March in which the milk of such person is diverted to a nonpool plant for more than one-half of the days of delivery during the month.

§ 974.14 Handler.

"Handler" means (a) any person who operates a fluid milk plant, and (b) any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 974.13(c).

§ 974.15 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk on a route in the marketing area and who receives no fluid milk products from other dairy farmers or nonpool plants: *Provided,* That such person provides proof satisfactory to the market administrator that (a) the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 974.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month in the form of fluid milk products, except: (1) Fluid milk products received from pool plants, (2) producer milk, and (3) inventories of fluid milk products on hand at the beginning of the month; and

(b) Products other than fluid milk products from any source, except Class II and Class III products from pool plants, which are repackaged, reprocessed or converted to another product in the plant during the month or skim milk and butterfat in such products for which other utilization or disposition is not established on the basis of the records required pursuant to § 974.32.

§ 974.17 Chicago butter price.

"Chicago butter price" means the arithmetical average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported for the month by the Department.

§ 974.18 Nonfat dry milk price.

"Nonfat dry milk price" means the arithmetical average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk for human consumption, f.o.b. Chicago area manufacturing plants, as published for the month by the Department.

MARKET ADMINISTRATOR

§ 974.20 Designation.

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 974.21 Powers.

The market administrator shall have the power to: (a) Administer all of the terms and provisions of this part; (b) make rules and regulations to effectuate the terms and provisions of this part; and (c) receive, investigate, and report to the Secretary complaints of violations of this part.

§ 974.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties, and conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(c) Pay, out of the funds provided by § 974.76:

(1) The cost of his bond and of the bonds of those of his employees who handle funds entrusted to the market administrator,

(2) His own compensation, and

(3) All other expenses, except those incurred under § 974.77, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(d) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to his successor or to such other person as the Secretary may designate;

(e) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days, after the day upon which he is required to perform such acts, has not made:

(1) Reports pursuant to § 974.30, or

(2) Payments pursuant to §§ 974.71, 974.72, 974.75, 974.76, or 974.78;

(f) Submit his books and records to examination and furnish such information and verified reports as may be requested by the Secretary;

(g) On or before the 10th day after the end of each month, supply each cooperative association upon request, with a record of the amount and average butterfat test of milk received during such month and the amount of any advance payments made and of any deductions or charges from payments for such milk authorized with respect to each producer determined by the market administrator to be a member of such association or to have given written authorization to such association to receive such information;

(h) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other person upon whose utilization the classification of milk for such handler depends;

(i) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 6th day of each month, the minimum Class I and Class II prices and butterfat differentials computed pursuant to §§ 974.51 (a) and (b) and 974.52(a);

(2) On or before the 6th day after the end of each month, the minimum Class III and Class IV prices and the butterfat differentials computed pursuant to §§ 974.51 (c) and (d) and 974.52 (b) and (c); and

(3) On or before the 10th day after the end of each month, the uniform price computed pursuant to § 974.61 and the butterfat differential computed pursuant to § 974.73;

(j) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information; and

(k) On or before the 10th day after the end of each month, upon request by a cooperative association described in § 974.77(b) or the operator of a pool plant, furnish such person and publicly announce by posting in a conspicuous place in his office, unless otherwise directed by the Secretary, the name of each handler who during the month received producer milk and the percentage of the skim milk and butterfat in such milk which was classified in each class during the month together with any significant changes in the reported percentages for any previous month as are revealed by the regular audit of the market administrator.

REPORTS, RECORDS, AND FACILITIES

§ 974.30 Reports of receipts and utilization.

On or before the 6th day after the end of each month, each handler shall report for such month to the market administrator for each of his pool plant(s), in the detail and on the forms prescribed by the market administrator, the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Products specified in Class II and Class III milk from pool plants which are reprocessed or converted to another product in the plant during the month;

(4) Other source milk; and

(5) Beginning and ending inventories of fluid milk products;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe; and

(d) His producer payroll which shall show for each producer and association of producers:

(1) The total pounds of producer milk received and the average butterfat test thereof;

(2) The amount of any advance payments; and

(3) The nature, amount or rate per hundredweight of milk of each deduction or charge made by the handler.

§ 974.31 Other reports.

(a) Each handler and producer-handler shall make reports to the market administrator with respect to receipts and utilization at each of his fluid milk plants which is not a pool plant at such time and in such manner as the market administrator may request.

(b) The operator of a pool plant shall notify the cooperative association of his intention to divert milk of its member-producers pursuant to § 974.13(c) not less than 24 hours prior to such diversion.

§ 974.32 Records and facilities.

Each handler and producer-handler shall maintain and make available to the market administrator, his agent, or such other person as the Secretary may designate, during the usual hours of business, such accounts and records of his operations and such facilities as, in the opinion of the market administrator, are necessary to verify reports or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat handled, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat and for other contents, of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 974.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided,* That if within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 974.40 Basis of classification.

The skim milk and butterfat which are required to be reported pursuant to § 974.30(a) shall be classified by the market administrator, subject to the provisions of §§ 974.41 to 974.46.

§ 974.41 Classes of utilization.

Subject to the provisions set forth in §§ 974.43 and 974.44 the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product, except as provided in paragraphs (b)(2) and (d)(2) of this section; (2) in ending inventory of fluid milk products; and (3) not specifically accounted for as Class II, Class III or Class IV milk;

(b) Class II milk shall be all skim milk and butterfat (1) used to produce cottage cheese, and any mixture containing skim milk or butterfat placed in containers or dispensers under pressure for the purpose of dispensing an aerated product (such as "Reddi-Wip", "Instant Whip", etc.), and (2) disposed of in bulk fluid form during any of the months of April through July, inclusive, to any manufacturer of soup, candy, or bakery products for use in such manufacturing operation;

(c) Class III milk shall be all skim milk and butterfat contained in frozen cream, and used to produce condensed milk and condensed skim milk (except evaporated milk or skim milk in hermetically sealed cans), ice cream, ice cream mix, ice cream novelties, ice sherbets, ice milk, imitation ice cream and frozen dairy desserts; and

(d) Class IV milk shall be all skim milk and butterfat (1) used to produce any milk product other than those specified in paragraphs (a), (b), or (c) of this section, (2) specifically accounted for as dumped or disposed of for livestock feed, (3) in actual plant shrinkage allocated to producer milk pursuant to § 974.42, but not in excess of two percent of such receipts of skim milk and butterfat, respectively, and (4) actual plant shrinkage allocated to other source milk pursuant to § 974.42.

§ 974.42 Shrinkage.

The market administrator shall allocate shrinkage at the handlers pool plant(s) as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively;

(b) To the producer milk at such plant, add the producer milk diverted to such plant and subtract producer milk diverted from such plant to another pool plant; and

(c) Prorate the amount computed pursuant to paragraph (a) of this section between receipts of skim milk and butterfat, respectively, in producer milk as computed pursuant to paragraph (b) of this section and in other source milk received in the form of a fluid milk product in bulk.

§ 974.43 Transfers.

Skim milk or butterfat transferred or diverted from a pool plant shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to another pool plant, unless:

(1) Utilization in another class is claimed by the operators of both plants in their reports submitted pursuant to § 974.30; and

(2) The transferee plant has utilization in the claimed classification of an equivalent amount of skim milk and butterfat, respectively, after making the assignment pursuant to § 974.36(a)(1), (2) and (3) and the corresponding steps of § 974.46(b): *Provided,* That if either or both plants have other source milk, the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the highest-valued use classification available at both plants to producer milk;

(b) As Class I milk, if transferred or diverted to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located 100 airline miles or more from the State Capitol in Columbus, Ohio; and

(d) As Class I milk if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant, except a plant operated by a producer-handler, located less than 100 airline miles from the State Capitol in Columbus, Ohio, unless:

(1) The handler claims classification in another class in his report submitted pursuant to § 974.30 and the operator of the nonpool plant maintains books and records showing the receipt and utilization of all skim milk and butterfat at such plant which are made available, if requested by the market administrator for verification: *Provided,* That if the classification claimed by the handler results in an amount of skim milk and butterfat claimed by all handlers transferring or diverting milk from pool plants to such nonpool plant in Class I milk, Class II milk, or Class III milk, respectively, of less than the assignable amounts remaining after the following computation, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk, Class II milk, or Class III milk, respectively, in series beginning with Class I milk, pro rata, in accordance with the total of the lower-priced classifications reported by each of such handlers:

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk and used to produce products in Class II milk and Class III milk, pursuant to the classification provisions of this order applied to such nonpool plant, subtract, in series beginning with Class I milk, the skim milk and butterfat received at such plant directly from dairy farmers who are approved by a duly constituted health authority to supply "Grade A" milk and who the market administrator determines constitutes the regular source of supply for such nonpool plant;

(ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk products received from other markets and which is classified and priced as Class I milk pursuant to another order issued pursuant to the Act: *Provided,* That the amount subtracted pursuant to this subdivision shall be limited to such market's pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the Act; and

(iii) From the remaining amount of Class II milk and Class III milk, subtract,

in series beginning with Class II milk, the skim milk and butterfat, respectively, in milk received directly from dairy farmers, at such nonpool plant, who are not approved by a duly constituted health authority to supply "Grade A" milk.

§ 974.44 Responsibility of handlers.

In establishing the classification of skim milk and butterfat as required in §§ 974.41 and 974.43, the burden rests upon the handler who first receives such skim milk or butterfat to prove to the market administrator that such skim milk or butterfat should not be classified as Class I milk.

§ 974.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of skim milk and butterfat in Class I milk, Class II milk, Class III milk and Class IV milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk used to produce and disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water normally associated with such solids in the form of whole milk.

§ 974.46 Allocation of skim milk and butterfat classified.

After making the computation pursuant to § 974.45, the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler during the month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class IV milk the pounds of skim milk in producer milk shrinkage assigned to Class IV milk pursuant to § 974.41(d)(3);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with the lowest-priced use available, the pounds of skim milk in other source milk;

(3) Subtract from the remaining pounds of skim milk in Class II and Class III milk, respectively, the pounds of skim milk in products specified in Class II and Class III milk, respectively, which have been produced in a pool plant and which are reprocessed or converted to another product in the plant during the month: *Provided,* That if the amount to be subtracted pursuant to this subparagraph is in excess of the amount remaining in such class, such excess shall be subtracted from the next higher-priced available class;

(4) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from other pool plants according to the classification determined pursuant to §§ 974.41 and 974.43;

(5) Subtract from the remaining pounds of skim milk in Class I milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class IV milk the skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) Subtract, in series beginning with the lowest-priced use available, the amount, if any, by which the total skim milk remaining in all classes exceeds the pounds of skim milk in producer milk.

(b) Butterfat shall be allocated by the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class.

MINIMUM PRICES

§ 974.50 Basic formula price.

The basic formula price per hundredweight of milk for the month shall be the higher of the prices as computed to the nearest one tenth of a cent by the market administrator for such month pursuant to paragraphs (a) and (b) of this section:

(a) The arithmetical average of the basic (or field) prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following places for which prices are reported to the market administrator or to the Department by the companies listed below:

Company and Location
Borden Co., Mount Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the Chicago butter price, subtract 3.5 cents, and multiply the difference by 4.2; and

(2) From the nonfat dry milk price, subtract 4 cents and multiply the difference by 8.2.

§ 974.51 Class prices.

Subject to the provisions of §§ 974.52, 974.53 and 974.55 the minimum class prices for producer milk per hundredweight for the month shall be determined by the market administrator as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month, plus $1.10 and plus or minus a "supply-demand adjustment" computed as follows:

(1) Compute a "current utilization percentage" by dividing the total receipts of producer milk during the second and third preceding months by the total gross pounds of Class I milk and Class II milk pursuant to § 974.41(b)(2) (less ending inventory and adjusted to eliminate duplications due to interhandler transfers) for the same months, multiplying the result by 100, and rounding to the nearest integer.

(2) Compute a "net utilization percentage" by subtracting (algebraically) from the current utilization percentage the following appropriate "standard utilization percentage".

Month for which a price is being computed:	*Standard utilization percentage*
January	127
February	129
March	126
April	124
May	125
June	130
July	141
August	160
September	156
October	137
November	128
December	130

(3) Determine the amount of the supply-demand adjustment from the following table:

Net utilization percentage:	*Supply-demand adjustment (cents per hundredweight)*
+16 or over	−38
+12 or +13	−28
+8 or +9	−20
+4 or +5	−10
+1 or −1	0
−4 or −5	+10
−8 or −9	+20
−12 or −13	+28
−16 or under	+38

Provided, That when the net utilization percentage is between two tabulated brackets, the supply-demand adjustment shall be determined by the tabulated bracket which is adjacent to the net utilization percentage and is the same as or the nearer to the bracket used in the immediately preceding month.

(b) *Class II milk.* The price for Class II milk shall be the basic formula price for the preceding month plus $0.70 and plus or minus the supply-demand adjustment computed pursuant to paragraph (a) of this section.

(c) *Class III milk.* The price for Class III milk shall be the basic formula price, adjusted during the months of August through March, by 26 percent of any plus supply-demand adjustment computed pursuant to paragraph (a) of this section rounded to the nearest one-tenth cent and plus the following amount for the specified month:

Month	*Amount (dollars)*
August through March	0.55
April through July	.50

(d) *Class IV milk.* The price for Class IV milk shall be the sum of the values computed pursuant to § 974.50(b)(1) and (2) minus 12 cents for the months of April through July and minus 5 cents for the months of August through March.

§ 974.52 Butterfat differentials to handlers.

For each one-tenth of one percent that the weighted average butterfat test of producer milk which is classified in each class for each handler is more or less than 3.5 percent there shall be added to

or subtracted from, as the case may be, the price for such class a butterfat differential calculated by the market administrator as follows:

(a) *Class I and Class II milk.* Multiply the Class I price for the month by 0.0172 and round to the nearest one-tenth cent: *Provided,* That the Class I and Class II butterfat differential shall not be less than the differential computed pursuant to paragraph (b) of this section for the current month.

(b) *Class III milk.* Multiply the Chicago butter price by the following factor for the specified month and round to the nearest one-tenth cent:

Month	*Factor*
August through March	0.126
April through July	0.124

(c) *Class IV milk.* Multiply the Chicago butter price by 0.115.

§ 974.53 Location differentials to handlers.

For that producer milk which is received at a pool plant located 80 miles or more from the State capitol in Columbus, Ohio, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to another pool plant in the form of a fluid milk product and assigned to Class I or Class II milk pursuant to the proviso of this section, or otherwise classified as Class I milk or Class II milk, the prices specified in § 974.51 (a) and (b) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Ohio State capitol (miles):	*Rate per hundredweight (cents)*
80 but less than 90	15.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class IV, and Class III milk in the transferee plant after making the calculations prescribed in § 974.46 (a) (3), and the comparable steps in § 974.46(b) for such plant, such assignment to transferrer-plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 974.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

§ 974.55 Prices of Class I and Class II milk disposed of in other Federal order markets.

The price of Class I milk and Class II milk disposed of from a pool plant in the marketing area of another Federal milk marketing order or agreement, issued pursuant to the Act, shall be the price applicable at such plant under the Columbus order, or the price applicable at such plant for milk or similar use or disposition pursuant to such other order, whichever is higher.

§ 974.56 Computation of prices of skim milk and butterfat.

The prices per hundredweight of skim milk and butterfat to be paid by each handler for milk in each class shall be computed and announced to handlers by the market administrator on or before the dates for announcing the corresponding class prices pursuant to § 974.22(i) as follows:

For each class, respectively, the price per hundredweight of skim milk shall be the applicable class price for the month (§ 974.51 (a), (b), (c) and (d) or § 974.55) less the result of multiplying the applicable class price butterfat differential for the month (§ 974.52 (a), (b), and (c)) by 35. For each class, respectively, the price per hundredweight of butterfat shall be the applicable class price for the month plus the result of multiplying the applicable class butterfat differential for the month by 965.

DETERMINATION OF UNIFORM PRICE

§ 974.60 Net obligation of each handler.

The net obligation of each handler for producer milk received during the month shall be a sum of money computed as follows:

(a) Multiply the pounds of skim milk and butterfat, respectively, in producer milk in each class by the applicable class prices pursuant to § 974.56 and add together the resulting amounts;

(b) Add the amount(s) computed by multiplying the pounds deducted from each class for such handler pursuant to § 974.46(a)(7) and the corresponding step of § 974.46(b) by the applicable class prices;

(c) Subtract an amount computed as follows: Multiply the difference between the Class III and the Class IV price for skim milk by the skim milk in producer milk in excess of the skim milk classified as Class I, Class II and Class III milk (other than that used to produce condensed skim milk) in any of the months of April, May, June and July which is disposed of in such month from the pool plant of such handler in the form of condensed skim milk to a plant whose supply of skim milk and butterfat is not required to be approved as Grade A milk by a duly constituted health authority;

(d) Add an amount computed as follows: Multiply the amount of skim milk and butterfat, respectively, subtracted pursuant to the proviso in § 974.46(a)(3) by the difference between the current month's prices for the class in which such skim milk and butterfat was originally classified and the prices of the class from which it is subtracted during the month; and

(e) Add or subtract, as the case may be, any amount due the producer-settlement fund or the handler as a result of errors discovered by the market administrator in the verification of reports or payments of such handler for any previous month.

§ 974.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 974.60 for all handlers except those who did not make payments pursuant to § 974.71 for the previous month;

(b) Subtract for each of the months of April, May, June and July an amount computed by multiplying the hundredweight of milk received from producers during the month by 35 cents;

(c) Add for each to the months of September, October, and November, 20, 30 and 30 percent, respectively, and for December the balance of the total amount subtracted during the immediately preceding April–July period pursuant to paragraph (b) of this section;

(d) Add the sum of the values of the location differentials allowable pursuant to § 974.74;

(e) Subtract, if the weighted average butterfat test of all producer milk represented in the sum computed pursuant to paragraph (a) of this section is greater than 3.5 percent; or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed as follows: Multiply the hundredweight of such milk by such difference and multiply the result by the butterfat differential computed pursuant to § 974.73 times 10;

(f) Add not less than one-half of the unobligated balance in the producer-settlement fund;

(g) Divide by the hundredweight of producer milk; and

(h) Subtract not less than 4 cents nor more than 5 cents.

§ 974.62 Notification of handlers.

The market administrator shall:

(a) On or before the 10th day after the end of each month, notify each handler who operates a pool plant:

(1) The amount and value of his milk in each class pursuant to § 974.60;

(2) The totals of such amounts and values due the producer-settlement fund pursuant to § 974.71; and

(3) The amount to be paid by such handler pursuant to § 974.76.

(b) On or before the 20th day after the end of each month, notify each handler who operates a fluid milk plant, not a pool plant:

(1) The amount due the producer-settlement fund pursuant to § 974.63; and

(2) The administrative assessment to be paid by such handler pursuant to § 974.63.

§ 974.63 Obligation of handlers operating a fluid milk plant which is a nonpool plant.

On or before the 25th day after the end of each month, each handler operating a fluid milk plant which is a nonpool plant shall pay to the market administrator the amounts computed pursuant to paragraph (a) of this section, unless the handler elects at the time of reporting pursuant to § 974.30 to pay the amounts computed pursuant to paragraph (b) of this section.

(a) An amount (1) for deposit in the producer-settlement fund, equal to the value of all skim milk and butterfat dis-

posed of from such plant as Class I milk (computed in accordance with § 974.45) on routes in the marketing area during the month at the Class I prices applicable at the location of such plant, less the value of such skim milk and butterfat at the Class IV prices and (2) for administrative assessment, the rate specified in § 974.76 with respect to the Class I milk disposed of from such plant in the marketing area during the month; and

(b) An amount (1) for deposit in the producer-settlement fund; equal to any plus amount remaining after deduction from the value that would have been computed pursuant to § 974.60 for such nonpool plant and a supply plant(s) as defined pursuant to § 974.9(b) which serves as a regular source of supply of milk for such nonpool plant if such plant(s) were a pool plant: (i) The gross payment made by such handler on or before the 18th day after the end of the month for milk received during the month from dairy farmers described in § 974.12(a) at such plant or at a plant which serves as a supply plant for such plant and (ii) any payments made in accordance with provisions similar to those contained in paragraphs (a)(1) of this section and subparagraph (1) of this paragraph applicable to such plant as a partially regulated plant under another order issued pursuant to the Act and (2) for administrative assessment, an amount equal to that which would have been computed pursuant to § 974.76 if such plant were a pool plant during the month, except that if such plant is also a partially regulated plant under another order issued pursuant to the Act and the Class I sales in such other marketing area exceeded those made in the Columbus marketing area during the month, the payments due under this subparagraph shall be reduced by the amount of any payments for administrative assessment under such other order.

§ 974.64 Plants subject to other Federal orders.

The provisions of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 974.10 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Columbus, Ohio, marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided,* That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

PAYMENTS

§ 974.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 974.63 and 974.71 shall be deposited in this fund, and all payments made pursuant to § 974.72 (a) and (b) shall be made out of this fund; and

(b) All amounts subtracted pursuant to § 974.61(b) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 974.72 in accordance with the requirements of § 974.61(c).

§ 974.71 Payments to producer-settlement fund.

On or before the 12th day after the end of each month, each handler shall pay to the market administrator his obligation for milk for such month of which he is notified pursuant to § 974.62(a), less (a) the amount of deductions authorized pursuant to § 974.72(a)(4) and itemized on the handler's producer payroll: *Provided,* That such deductions for each individual producer shall not exceed the total value of the milk received from such producer during the month, and (b) an amount not to exceed the value of milk received from producers to whom the request to make payment pursuant to § 974.72(c) applies computed at the rate of the uniform price adjusted by the butterfat and location differentials pursuant to § 974.73 and § 974.74.

§ 974.72 Payments to producers.

(a) Except as provided in paragraph (c) of this section, on or before the 16th day after the end of each month, the market administrator shall make payment to each producer for milk received from him during the month by each handler from whom the appropriate payments have been received pursuant to § 974.71(a) at the uniform price computed pursuant to § 974.61 subject to the following adjustments:

(1) The butterfat differential pursuant to § 947.73;

(2) The location differential pursuant to § 974.74;

(3) Less marketing service deductions pursuant to § 974.77(a);

(4) Less proper deductions authorized in writing by the producer: *Provided,* That for producers who are members of a cooperative association which receives payment for milk pursuant to paragraph (b) of this section, such authorization for hauling and assignments shall be by the cooperative association; and

(5) Adjusted for any error in making payment to such producer for past months: *Provided,* That if the balance in the producer-settlement fund not otherwise obligated is insufficient to make all payments pursuant to this section, the market administrator shall reduce such payments pro rata and shall complete such payments on or before the next date for making payments pursuant to this section following that on which such balance of payment is received;

(b) In making payments to producers pursuant to paragraph (a) of this section, the market administrator shall pay on or before the 14th day after the end of the month to:

(1) A cooperative association qualified under § 974.77(b) which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such association to receive such payments, and

(2) Each handler an amount, if any, by which payments to producers for milk required pursuant to paragraph (c) of this section, before deductions for marketing services, exceeds the amount deducted pursuant to § 974.71 (a) and (b) with respect to such milk.

(c) On or before the 16th day after the end of each month, each handler shall pay each producer, who is not a member of a cooperative association qualified pursuant to § 974.77(b) and for whom a written request to make payments has been filed by the handler with the market administrator, for milk received from him during the month at not less than the uniform price as adjusted pursuant to paragraph (a) (1), (2), (3), and (4) of this paragraph; and

(d) In making the payments to producers pursuant to paragraphs (a), (b), and (c) of this section, the payer shall furnish each producer or cooperative association, as the case may be, with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The amount or the rate per hundredweight of milk and nature of each deduction claimed by the handler; and

(5) The net amount of payment to such producer.

§ 974.73 Butterfat differential to producers.

In making payment for producer milk pursuant to § 974.72, there shall be added to or subtracted from, respectively, the uniform price per hundredweight for each one-tenth of one percent of butterfat content in such milk above or below 3.5 percent a butterfat differential computed by the market administrator as follows:

(a) Compute the percentage that the butterfat in producer milk remaining in each class pursuant to § 974.46 is of the total butterfat in producer milk so assigned to such classes;

(b) Multiply each such percentage by the butterfat differential for the respective class pursuant to § 974.52; and

(c) Add into one total the values obtained in paragraph (b) of this section and round off such total to the nearest one-tenth cent.

§ 974.74 Location differential to producers.

In making payment for producer milk pursuant to § 974.72, the uniform price for all producer milk received at a pool plant located 80 miles or more by the shortest hard-surfaced highway distance from the Ohio State Capitol in Columbus, as determined by the market administrator, shall be reduced by the appropriate zone differential provided in § 974.53.

§ 974.75 Adjustment of errors.

Whenever audit by the market administrator of the payment required to be made by a handler pursuant to § 974.63, § 974.71 or § 974.72, discloses payment of less than is required, the handler shall make up such payment not later than the time for making such payments next following such disclosure.

§ 974.76 Expense of administration.

As his pro rata share of expense incurred in the maintenance and function of the office of the market administrator and in the performance of his duties, each handler shall pay to the market administrator on or before the 12th day after the end of the month, two cents per hundredweight, or such lesser amount as the Secretary from time to time may prescribe, with respect to all receipts at his pool plant during the month of producer milk and other source milk received in the form of a fluid milk product. A handler operating a fluid milk plant which is a nonpool plant shall make administrative assessment payments in accordance with § 974.63.

§ 974.77 Marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator or handler, as the case may be, shall deduct 5 cents per hundredweight or such amount not to exceed 5 cents as the Secretary may from time to time prescribe, from the payments made to each producer pursuant to § 974.72 (a) or (c). Such deductions made by the handler shall be paid to the market administrator on or before the 12th day after the end of the month. Such moneys shall be used by the market administrator to check weights, samples, and tests of producer milk received by handlers and to provide producers with market information, such service to be performed by the market administrator or by an agent engaged by and responsible to him;

(b) In the case of producers for whom a cooperative association which, as determined by the Secretary, has its entire activities under the control of its members and is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and, on or before the 14th day after the end of each delivery period, pay over such deductions to the cooperative association rendering such services.

§ 974.78 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 974.63, 974.71, 974.72, 974.75, 974.76, or 974.77 shall be increased one-half of one percent each month or fraction thereof, compounded monthly, until such obligation is paid.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 974.80 Effective time.

The provisions of this part or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 974.81.

§ 974.81 Suspension or termination.

The Secretary may suspend or terminate this part or any provision of this part whenever he finds that this part or any provision of this part obstructs, or does not tend to effectuate the declared policy of the Act. This part shall terminate, in any event, whenever the provisions of the Act authorizing it cease to be in effect.

§ 974.82 Continuing power and duty of the market administrator.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(a) The market administrator, or such other person as the Secretary may designate, shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements, and when so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, or such person to such person as the Secretary may direct; and

(3) If so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

(b) Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 974.90 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 974.91 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision and of the remaining provisions of this part to other persons or circumstances shall not be affected thereby.

§ 974.92 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c(15)(A) of the Act or before a Court.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month fol-

lowing the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

[F.R. Doc. 59-1787; Filed, Feb. 27, 1959; 8:50 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 522]

EMPLOYMENT OF LEARNERS

Notice of Proposed Amendment

Pursuant to section 14 of the Fair Labor Standards Act of 1938 (section 14, 52 Stat. 1068, as amended; 29 U.S.C. 214), the Administrator has heretofore issued supplemental industry regulations (21 F.R. 581-582) providing for the employment of learners in the Glove Industry (§§ 522.60 through 522.65) at wages lower than the minimum wage applicable under section 6 of the Act.

These regulations have been re-examined in the light of economic developments and administrative experience in their various applications since the promulgation of the $1.00 statutory minimum. Persons affected by them have been consulted, and all relevant information indicates a need to revise the regulations applicable to the Glove Industry.

The amendment proposed herein would revise § 522.65(a) as follows: (1) Increase the subminimum rates which may be authorized in special certificates issued by the Administrator in the leather glove branch, woven or knit fabric glove branch and knitted glove branch of the industry to 85 cents and 95 cents in lieu of the 80 cents and 90 cents, respectively, presently provided; (2) increase such subminimum rates in the work glove branch of the industry to 83 cents and 90 cents, in lieu of the 77½ cents and 85 cents, respectively, presently provided.

In order that they conform to the above proposed amendments, it is also proposed to amend all outstanding learner certificates for this industry accordingly, as well as expired certificates under which learners are currently employed pursuant to § 522.6(c) of 29 CFR Part 522.

Accordingly, notice is hereby given pursuant to the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1001), that under the authority provided in section 14 of the Fair Labor Standards Act of 1938, as amended (section 14, 52 Stat. 1068; 29 U.S.C. 214), the Administrator of the Wage and Hour Division, United States Department of Labor, proposes to amend Part 522, as follows:

§ 522.65 [Amendment]

1. Paragraph (a) of § 522.65 is amended to read as follows:

(a) The subminimum rates which may be authorized in special certificates issued in the Glove Industry shall be not less than 85 cents an hour for the first 320 hours and not less than 95 cents an hour for the remaining 160 hours in the leather glove, woven or knit fabric glove, and knitted glove branches of the industry, and not less than 83 cents an hour for the first 320 hours and not less than 90 cents an hour for the remaining 160 hours in the work glove branch of the industry.

2. A new section designated § 522.66 is added to read as follows:

§ 522.66 Amendment to certificates previously issued.

Pursuant to § 522.8, learners certificates heretofore issued in the Glove Industry shall be amended to restrict the employment of learners under such certificates to the limitations on their employment under new certificates which are expressed in § 522.65.

(Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214)

Prior to final adoption of the proposed amendments, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Administrator of the Wage and Hour Division, United States Department of Labor, Washington 25, D.C., within 15 days subsequent to the publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D.C., this 24th day of February 1959.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 59-1765; Filed, Feb. 27, 1959; 8:48 a.m.]

[29 CFR Part 681]

HOME WORKERS IN CERTAIN INDUSTRIES IN PUERTO RICO

Notice of Proposed Rule Making

In accordance with section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1003) and pursuant to the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.), Reorganization Plan No. 6 of 1950 (3 CFR, 1950 Supp., p. 165), and General Order No. 45-A (15 F.R. 3290) of the Secretary of Labor, notice is hereby given that the Administrator proposes to amend Part 681 of Title 29, Code of Federal Regulations.

The purpose of the amendment is to affect a correction in the authority cited for issuance of Part 681, and to prescribe requirements which an employer must satisfy in adopting a piece rate for each home worker who is to perform an operation for which no minimum piece rate has been prescribed by regulation or order of the Administrator or his authorized representative.

The proposed amendments are set forth below:

1. The authority for issuance of Part 681 is changed to read as follows:

AUTHORITY: §§ 681.1 to 681.12 issued under secs. 6, 11, 52 Stat. 1062, 1066, as amended; 29 U.S.C. 206, 211.

2. Section 681.10 was deleted in the amendments of 29 CFR 681 published on October 30, 1958 (23 F.R. 8395-8396). A new § 681.10 is inserted to read as follows:

§ 681.10 Piece rates adopted by employers.

(a) Pursuant to the provisions of section 6(a)(2) of the Act, in the event that a homeworker performs an operation for which no minimum piece rate has been prescribed by regulation or order of the Administrator or his authorized representative, he shall be paid a piece rate adopted by the employer which shall yield to homeworkers of ordinary skill, under prevalent operating conditions and with equipment ordinarily found in homes, an amount not less than the applicable minimum hourly wage rate established by wage order. This piece rate must be the result of production time studies conducted in Puerto Rico with a representative group of homeworkers. Such piece rate shall be lawful only if it actually satisfies the requirements of this section, and such a rate shall remain in effect only until such time as the Administrator or his authorized representative, by regulation or order, establishes a minimum piece rate for the operations.

(b) Piece rates adopted under this section shall be filed with the Wage and Hour Division in Puerto Rico, accompanied by a record of the time tests showing a full description of the operation tested, the date of the test, measures taken to insure a representative sample of homeworkers, the starting and stopping time of each worker tested together with the number of units produced in that time, the total number of workers tested, the total number of hours worked, and the total number of units produced.

Prior to the taking of any final action on this proposal, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Administrator, Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington 25, D.C., within fifteen days from publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D.C., this 24th day of February 1959.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 59-1764; Filed, Feb. 27, 1959; 8:48 a.m.]

[29 CFR Parts 601, 602, 603]

[Administrative Order 517]

VARIOUS INDUSTRIES IN PUERTO RICO

Appointment To Investigate Conditions and Recommend Minimum Wages; Notice of Hearing

Pursuant to authority contained in the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.), and Reorganization Plan No. 6 of 1950 (3 CFR, 1950 Supp., p. 165), I hereby appoint, convene, and give notice of the hearings of Industry Committee No. 44-A for the Fabric and Leather Glove Industry in Puerto Rico; Industry Committee No. 44-B for the Leather, Leather Goods, and Related Products Industry in Puerto Rico; and Industry Committee No. 44-C for the Shoe and Related Products Industry in Puerto Rico.

Industry Committee No. 44-A is composed of the following representatives:

For the public: Leo C. Brown, Chairman, St. Louis, Mo., Kenneth R. Redden, Charlottesville, Va., Pedro Munoz-Amato, Rio Piedras, Puerto Rico.

For the employees: Valentin J. T. Wertheimer, New York, N.Y., Hipolito Marcano, San Juan, Puerto Rico, Edward Friss, New York, N.Y.

For the employers: Alvin D. Emmons, Auburn, N.Y., William K. Lawson, Aibonito, Puerto Rico, Harry Elton, Santurce, Puerto Rico.

For the purpose of this order, the Fabric and Leather Glove Industry in Puerto Rico is defined as follows:

The manufacture of dress, semidress, and work gloves and mittens from woven or knit fabric, leather, or fabric or leather in combination with any other material: *Provided, however,* That the industry shall not include the manufacture of knit or crocheted gloves and mittens, sport and athletic gloves and mittens, or rubber gloves and mittens.

Industry Committee No. 44-B is composed of the following representatives:

For the public: Leo C. Brown, Chairman, St. Louis, Mo., Kenneth R. Redden, Charlottesville, Va., Pedro Munoz-Amato, Rio Piedras, Puerto Rico.

For the employees: Vanlentin J. W. Wertheimer, New York, N.Y., Hipolito Marcano, San Juan, Puerto Rico, Edward Friss, New York, N.Y.

For the employers: Alvin D. Emmons, Auburn, N.Y., Sydney Franklin, Ponce, Puerto Rico, Eugene F. Patterson, Caguas, Puerto Rico.

For the purpose of this order the Leather, Leather Goods, and Related Products Industry in Puerto Rico is defined as follows:

The curing, tanning, or other processing of hides, skins, leather, or furs, and the manufacture of products therefrom; the manufacture from artificial leather, fabric, plastics, paper or paperboard, or similar materials of trunks, suitcases, brief cases, wallets, billfolds, coin purses, card cases, key cases, cigarette cases, watch straps, pouches, tie cases, toilet kits, checkbook covers, sport and athletic gloves and mittens, belts (except fabric belts), and like articles; and the manufacture of baseballs, softballs, footballs, and basketballs covered with leather, artificial leather, fabric, plastics, or similar materials: *Provided, however,* That the industry shall not include any product or activity included in the Button, Jewelry, and Lapidary Work Industry (29 CFR Part 616), the Chemical, Petroleum, Rubber, and Related Products Industry (29 CFR Part 670), or the Needlework and Fabricated Textile Products Industry (29 CFR Part 612), as defined in the wage orders for those industries in Puerto Rico, or in the Fabric and Leather Glove Industry or the Shoe and Related Products Industry, as defined in the Administrative Order appointing Industry Committees Nos. 44-A and 44-C, respectively, for those industries in Puerto Rico.

Industry Committee No. 44-C is composed of the following representatives:

For the public: Leo C. Brown, Chairman, St. Louis, Missouri, Kenneth R. Redden, Charlottesville, Virginia, Pedro Munoz-Amato, Rio Piedras, Puerto Rico.

For the employees: Valentin J. T. Wertheimer, New York, New York, Hipolito Marcano, San Juan, Puerto Rico, Hartley B. Hutchison, Milwaukee, Wisconsin.

For the employers: Alvin D. Emmons, Auburn, New York, Robert A. Bristol, Ponce, Puerto Rico, Luis Benitez-Carle, Manati, Puerto Rico.

For the purpose of this order the Shoe and Related Products Industry in Puerto Rico is defined as follows:

The manufacture or partial manufacture of footwear from any material and by any process except knitting, crocheting, vulcanizing of the entire article, vulcanizing of the sole to the upper, or molding plastic, including, but without limitation, shoes, slippers, sandals, moccasins, boots, boot tops, puttees (except spiral puttees), athletic shoes, burial shoes, and shoes completely rebuilt in a shoe factory; the manufacture from any material (except rubber, composition of rubber, or plastic molded to shape) of cut stock and findings for footwear, including, but without limitation, heels (except wood heel blocks), linings, vamps, quarters, outsoles, midsoles, insoles, taps, lifts, rands, toplifts, bases, shanks, boxtoes, counters, stays, stripping, sock linings, heel pads, pasted shoe stock, and bows, ornaments, and trimmings designed exclusively for use on shoes; and the manufacture of boot and shoe patterns.

I hereby refer to each of the above-named industry committees the question of the minimum wage rate or rates to be fixed under the provisions of section 6(c) of the Act in the particular industry with which it is concerned. Each industry committee shall investigate conditions in its industry, and the committee, or any authorized sub-committee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act.

Industry Committee No. 44-A shall convene at 10:00 a.m. on April 1, 1959, in the office of the Wage and Hour Division, United States Department of Labor, New York Department Store Building, Fortaleza and San Jose Streets, San Juan, Puerto Rico, to conduct its investigation and shall commence its hearings at 2:00 p.m. on the same date at the same place. Following this hearing, Industry Committees Nos. 44-B and 44-C shall convene consecutively in the same place in that order at hours designated by the committee chairman to conduct their investigations and to hold their hearings.

In order to reach as rapidly as is economically feasible the objective of the minimum wage prescribed in paragraph (1) of section 6(a) of the Act, each industry committee shall recommend to the Administrator the highest minimum wage rate or rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa. Where an industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry, the industry committee shall recommend such reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein which will not substantially curtail employment in such classifications and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within the industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (1) Competitive conditions as affected by transportation, living, and production costs; (2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

The Administrator shall prepare an economic report for such committee containing such data as he is able to assemble pertinent to the matters herein referred to that committee. Copies of each such report may be obtained at the national and Puerto Rican offices of the United States Department of Labor as soon as they are completed and prior to the hearings. Each committee will

take official notice of the facts stated in the economic report to the extent they are not refuted at the hearings.

The procedure of these industry committees will be governed by Part 511 of Title 29, Code of Federal Regulations. As a prerequisite to participation as witnesses or parties these regulations require, among other things, that interested persons in the present matters shall file pre-hearing statements containing certain specified data, not later than March 22, 1959.

Signed at Washington, D.C., this 25th day of February 1959.

JAMES T. O'CONNELL,
Acting Secretary of Labor.

[F.R. Doc. 59-1809; Filed, Feb. 27, 1959; 8:52 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice Further Extending Time for Filing Comments re Proposed Exemption of Certain Food Additives From the Requirement of Tolerances

A further extension of the time allowed for filing written comments upon the proposal of the Commissioner of Food and Drugs to establish a regulation listing certain substances that are generally recognized as safe and thus exempt from the requirements of the Food Additives Amendment of 1958 is necessary to allow appropriately qualified experts opportunity to study and comment on the proposal. There was published in the FEDERAL REGISTER of January 6, 1959 (24 F.R. 109), a notice extending the time for filing comments on the proposed definitions and procedural and interpretative regulations (including the subject matter of this order) to February 7, 1959.

Therefore, it is ordered by the Commissioner, pursuant to sections 409 and 701 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1055, 72 Stat. 948; 21 U.S.C. 348, 371), That the time for filing written comments on that portion of the proposed order of December 9, 1958, dealing specifically with substances proposed to be exempted from the requirement of tolerances (§ 121.100) be extended to April 9, 1959.

Dated: February 20, 1959.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 59-1759; Filed, Feb. 27, 1959; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 195]

[Ex Parte No. MC-40]

HOURS OF SERVICE OF DRIVERS

Qualifications and Maximum Hours of Service of Employees of Motor Carriers and Safety of Operation and Equipment; Extension of Time To File Statements

In the matter of extending time for filing statements in response to the proposal to vacate and set aside §§ 195.10 and 195.11, amend § 195.12, and prescribe a new § 195.11 relating to hours of service of drivers.

Upon consideration of the record in the above-entitled proceeding and request of American Trucking Associations, Inc., for an extension of time within which to file statements in response to the Notice of Proposed Rule Making dated December 1, 1958; and good cause appearing therefor:

It is ordered, That the time within which such statements may be filed, be, and it is hereby, extended to July 1, 1959.

Notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Interstate Commerce Commission, Washington, D.C., and by filing a copy thereof with the Director, Federal Register Division.

Dated at Washington, D.C., this 19th day of February A.D. 1959.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 59-1753; Filed, Feb. 27, 1959; 8:46 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[P. & S. Docket No. 2410]

TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION, INC.

Notice of Hearing Regarding Brand Inspection Authorization

There have been filed with the Director of the Livestock Division, Agricultural Marketing Service, informal complaints alleging that it would be in the public interest to revoke the authorization issued under section 317 (7 U.S.C. 217a) of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), to the Texas and Southwestern Cattle Raisers Association, Inc., to charge and collect fees for the inspection of brands, marks and other identifying characteristics of livestock originating in or shipped from the State of Texas for the purpose of determining the ownership of such livestock. Upon the basis of the allegations set forth in the informal complaints, the Director of the Livestock Division, Agricultural Marketing Service, has issued a complaint and notice of hearing alleging the following:

1. The Texas and Southwestern Cattle Raisers Association, Inc., hereinafter referred to as the "respondent", is a duly organized livestock association of the State of Texas.

2. Respondent has been authorized by the Secretary of Agriculture, with respect to livestock originating in or shipped from the State of Texas, to charge and collect reasonable and nondiscriminatory fees, to be paid by the owners of the livestock inspected, for the inspection of brands, marks and other identifying characteristics of livestock sold or offered for sale at those markets at which respondent may register with the Secretary of Agriculture as a market agency, such inspection to be made to determine the ownership of the livestock.

3. Respondent is registered with the Secretary of Agriculture as a market agency to furnish brand inspection services at various posted terminal stockyards and auction markets.

4. Branding or marking of livestock as a means of establishing ownership of livestock is not now a mandatory requirement under the statutes of the State of Texas.

5. The practice of branding or marking, or both branding and marking, livestock does not now prevail by custom in the State of Texas to an extent that would warrant the charging and collection of mandatory fees for the inspection of brands, marks and other identifying characteristics of livestock to determine the ownership of such livestock.

6. A substantial portion of the cattle originating in or shipped from the State of Texas is not inspected for brands, marks and other identifying characteristics, nor are the owners of such cattle charged a fee for such inspection, since a substantial portion of the cattle produced in the State of Texas is not sold through posted markets in the State of Texas.

7. A majority of the cattle sold through posted markets in the State of Texas is neither branded nor marked.

8. Inspection of cattle, particularly unbranded and unmarked cattle, for brands, marks and other identifying characteristics for the purpose of determining the ownership of such cattle is not of sufficient value to the owners of the cattle to warrant the charging of a mandatory fee therefor.

The complaint and notice of hearing provides that a hearing for the purpose of determining the truth of the allegations set forth above will be held on April 6, 1959, at 10:00 a.m., c.s.t., in Room 2144, Federal Center, 300 West Vickery Street, Fort Worth, Tex. The complaint and notice of hearing also provides that notice of this proceeding shall be given to the public by publication in the FEDERAL REGISTER and all interested persons shall be afforded a period of 15 days in which to indicate a desire to be heard in the matter.

Therefore, notice is hereby given of the hearing in this matter. All interested persons who desire to be heard shall notify the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., within 15 days after the publication of this notice. All such interested persons will be given the opportunity to present their views either in person or by attorney.

Done at Washington, D.C., this 25th day of February 1959.

[SEAL] JOHN C. PIERCE,
Acting Director, Livestock Division, Agricultural Marketing Service.

[F.R. Doc. 59-1788; Filed, Feb. 27, 1959; 8:50 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-53]

Aerojet-General Nucleonics

Amendment to Construction Permit

Please take notice that the Atomic Energy Commission has issued Amendment No. 2, set forth below, to Construction Permit No. CPRR-13 extending the latest completion dates for nuclear reactors Model AGN-201, Serial Nos. 115 through 120.

Dated at Germantown, Md., this 24th day of February 1959.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of Licensing and Regulation.

[Construction Permit No. CPRR-13, Amdt. 2]

Condition 1 of CPRR-13, as amended, is hereby amended in the following respects: The latest completion date for reactors Model AGN-201 Serial Nos. 115 through 120 is March 1, 1960.

This amendment is effective as of the date of issuance.

Date of issuance: February 24, 1959.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of Licensing and Regulation.

[F.R. Doc. 59-1742; Filed, Feb. 27, 1959; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 9315, et al.]

AMERICAN EXPRESS CO. ET AL.

Notice of Hearing

In the matter of the investigation of applications of American Express Company for a certificate of public convenience and necessity, and approval of various relationships.

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, that a hearing in the above-entitled proceeding is assigned to be held March 9, 1959, at 10:00 a.m., e.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Herbert K. Bryan.

Dated at Washington, D.C., February 19, 1959.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 59-1793; Filed, Feb. 27, 1959; 8:51 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 11314; FCC 59M-255]

SPARTAN RADIOCASTING CO. (WSPA-TV)

Order Continuing Hearing Conference

In re application of the Spartan Radiocasting Company (WSPA-TV), Spartanburg, South Carolina, Docket No. 11314, File No. BMPCT-2042; for modification of construction permit.

It is ordered, This 24th day of February 1959, that the prehearing conference in the above-entitled proceeding, which was scheduled for March 2, 1959, will be held on March 3, 1959, in the Offices of the Commission, Washington, D.C., commencing at 2:00 p.m.

Released: February 25, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1768; Filed, Feb. 27, 1959; 8:48 a.m.]

[Docket No. 12068; FCC 59M-241]

FLORENCE BROADCASTING CO., INC.

Order Scheduling Prehearing Conference

In re application of Florence Broadcasting Company, Inc., Brownsville, Tennessee, Docket No. 12068, File No. BP-10850; for construction permit.

It is ordered, This 20th day of February 1959, that a prehearing conference in the above-entitled matter will be held at 10:00 a.m., March 19, 1959, in the offices of the Commission, Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1769; Filed, Feb. 27, 1959; 8:48 a.m.]

[Docket No. 12349 etc.; FCC 59M-252]

WJPB-TV, INC., ET AL.

Order Continuing Hearing Conference

In re applications of WJPB-TV, Inc., Weston, West Virginia, Docket No. 12349, File No. BPCT-2318; West Virginia Radio Corporation, Weston, West Virginia, Docket No. 12350, File No. BPCT-2343; Telecasting, Inc., Weston, West Virginia, Docket No. 12351, File No. BPCT-2345; for construction permits for new television broadcast stations (Channel 5).

At the request of counsel for Telecasting, Inc., and with the consent of counsel for all parties: *It is ordered,* This 24th day of February 1959, that the prehearing conference now scheduled for February 27, 1959, at 9:00 o'clock a.m., be, and the same is hereby, continued to March 5, 1959, at 9:00 o'clock a.m. in the offices of the Commission Washington, D.C.

Released: February 25, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1770; Filed, Feb. 27, 1959; 8:48 a.m.]

[Docket No. 12560; FCC 59M-239]

LAKESIDE BROADCASTERS

Order Continuing Hearing

In re application of Edward J. Jansen and Keith Jack Rudd, d/b as Lakeside Broadcasters, Sparks, Nevada, Docket No. 12560, File No. BP-11656; for construction permit.

The Hearing Examiner has before him a petition filed by Lakeside Broadcasters on February 19, 1959, for a continuance of the hearing now scheduled for February 25, 1959, to March 6, 1959; and

It appearing that counsel for the Broadcast Bureau, the only other party to the proceeding, has no objection to a grant of the petition;

It is ordered, This 24th day of February 1959, that the hearing now scheduled for 2:00 p.m. February 25, 1959, is continued to 2:00 p.m. March 6, 1959.

Released: February 25, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1771; Filed, Feb. 27, 1959; 8:48 a.m.]

[Docket Nos. 12605, 12606; FCC 59M-249]

WABASH VALLEY BROADCASTING CORP. (WTHI-TV) AND LIVESAY BROADCASTING CO., INC.

Order Continuing Hearing Conference

In re application of Wabash Valley Broadcasting Corporation (WTHI-TV), Terre Haute, Indiana, Docket No. 12605, File No. BPCT-193; for renewal of license; Livesay Broadcasting Co., Inc., Terre Haute, Indiana, Docket No. 12606, File No. BPCT-2514; for construction permit for new television broadcast station (Channel 10).

Because of the pendancy of various pleadings: *It is ordered,* This 20th day of

February 1959, that the conference now scheduled for February 24, 1959 is continued to Thursday, March 26, 1959, at 10 a.m., in the offices of the Commission, Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1772; Filed, Feb. 27, 1959; 8:48 a.m.]

[Docket Nos. 12694, 12695; FCC 59M-258]

TRI-COUNTY BROADCASTING CO. AND RADIO MISSOURI CORP. (WAMV)

Order Continuing Hearing

In re applications of Wilbur J. Meyer, d/b as Tri-County Broadcasting Company, Jerseyville, Illinois, Docket No. 12694, File No. BP-11423; Radio Missouri Corporation (WAMV), East St. Louis, Illinois, Docket No. 12695, File No. BP-12193; for construction permits.

The Hearing Examiner having under consideration petition filed on February 18, 1959, by Tri-County Broadcasting Company, requesting indefinite continuance of the hearing herein and of the date for exchange of exhibits;

It appearing, that counsel for all other parties have consented to such continuance;

It is ordered, This 24th day of February 1959, that the above petition is granted; and the dates for hearing and exchange of exhibits herein, presently scheduled for March 23 and March 16, 1959, respectively, are continued without date pending action by the Commission upon the petition for reconsideration and grant without hearing filed by Tri-County Broadcasting Company on February 12, 1959.

Released: February 25, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1773; Filed, Feb. 27, 1959; 8:48 a.m.]

[Docket No. 12696; FCC 59M-240]

BOOTH BROADCASTING CO. (WBBC)

Order Continuing Hearing

In re application of Booth Broadcasting Company (WBBC), Flint, Michigan, Docket No. 12696, File No. BP-11661; for construction permit.

The Hearing Examiner having under consideration an oral request for a continuance of the hearing now scheduled to commence on February 24, 1959;

It appearing that the applicant and the Broadcast Bureau have expressed a desire for additional time and that the other parties have offered no objection to a grant of the request;

It is ordered, This 20th day of February 1959 that the hearing is continued from February 24 to March 13, 1959.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1774; Filed, Feb. 27, 1959; 8:48 a.m.]

[Docket No. 12758; FCC 59M-245]

SNOW CONSTRUCTION CO.

Order Scheduling Hearing

In the matter of S. C. Snow, d/b as Snow Construction Company, P.O. Box 311, Alamogordo, New Mexico, Docket No. 12758; order to show cause why there should not be revoked the license for Special Industrial Radio Station KKR-399.

It is ordered, This 20th day of February 1959, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 24, 1959, in Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1775; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket No. 12759; FCC 59M-243]

ANTHONY VITALE

Order Scheduling Hearing

In the matter of Anthony Vitale, 93 Shore Drive, Somerville, Massachusetts, Docket No. 12759; order to show cause why there should not be revoked the license for Radio Station WA-9728 aboard the vessel "Princess".

It is ordered, This 20th day of February 1959, that Isadore A. Honig will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 21, 1959, in Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1776; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket No. 12761; FCC 59M-244]

VETERANS CAB CO.

Order Scheduling Hearing

In the matter of Frank W. Lemieux, d/b as Veterans Cab Company, 93 North Main Street, Randolph, Massachusetts, Docket No. 12761; order to show cause why there should not be revoked the license for Taxicab Radio Station KCE-847.

It is ordered, This 20th day of February 1959, that Isadore A. Honig will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 22, 1959, in Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1777; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket No. 12764; FCC 59M-246]

BRUCE W. ZIRLOTT

Order Scheduling Hearing

In the matter of Bruce W. Zirlott, Route 1, Box 121, Theodore, Alabama, Docket No. 12764; order to show cause why there should not be revoked the license for Radio Station WH-2007 aboard the vessel "Audrey Dell".

It is ordered, This 20th day of February 1959, that Forest L. McClenning will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 17, 1959, in Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1778; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket No. 12765; FCC 59M-242]

NEPTUNE'S SEAFOOD, INC.

Order Scheduling Hearing

In the matter of Neptune's Seafood, Inc., 64 Calle Cenizo, Brownsville, Texas, Docket No. 12765; order to show cause why there should not be revoked the license for Radio Station WK-3091 aboard the vessel "Jane R".

It is ordered, This 20th day of February 1959, that Millard F. French will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 20, 1959, in Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1779; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket No. 12766; FCC 59M-247]

TOWN OF ISLESBORO, MAINE

Order Scheduling Hearing

In the matter of Town of Islesboro, Maine, Office of Town Manager, Dock

Harbor, Maine, Docket No. 12766; order to show cause why there should not be revoked the license for Radio Station WH–8495 aboard the vessel "Governor Brann".

It is ordered, This 20th day of February 1959, that Elizabeth C. Smith will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 20, 1959, in Washington, D.C.

Released: February 24, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59–1780; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket Nos. 12775, 12776; FCC 59–126]

FARMVILLE BROADCASTING CO. AND WYSR, INC. (WYSR)

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of James H. Mayo and R. E. Mayo d/b as the Farmville Broadcasting Company, Farmville, North Carolina, Docket No. 12775, File No. BP–11530; WYSR, Incorporated (WYSR), Franklin, Virginia, Docket No. 12776, File No. BP–12323; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 18th day of February 1959;

The Commission having under consideration the above-captioned applications of James H. Mayo and R. E. Mayo, d/b as The Farmville Broadcasting Company, for a construction permit for a new standard broadcast station to operate on 1250 kilocycles with a power of 500 watts, daytime only, at Farmville, North Carolina; and of WYSR, Incorporated, for a construction permit to increase the power of Station WYSR, Franklin, Virginia, from 1 kilowatt to 5 kilowatts, daytime, and to continue operation on the presently assigned frequency of 1250 kilocycles;

It appearing that, except as indicated by the issues specified below, both applicants are legally, financially, technically and otherwise qualified to operate their proposed stations but that the simultaneous operation of both proposals would result in mutual interference; that the proposed operation of Station WYSR would involve mutual interference with Stations WCDJ, Edenton, North Carolina, and WCNC, Elizabeth City, North Carolina; and that the proposal of WYSR may contravene § 3.24(b) (7) of the Commission rules in that the population within the one mv/m contour exceeds one percent of the population within the one v/m contour exceeds one percent of the population within the 25 mv/m contour; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the applicants and Stations WCDJ and WCNC were advised by letter dated November 14, 1958, of the aforementioned deficiencies and that the Commission was unable to conclude that a grant of either of the above-captioned applications would be in the public interest; and

It further appearing that both applicants and WCDJ filed timely replies to the Commission's letter; and

It further appearing that a proposal of Fredericksburg Broadcasting Corporation to change the frequency of Station WFVA, Fredericksburg, Virginia from 1230 to 1250 kilocycles (File No. BP–11550) would receive objectionable interference from the instant proposal of WYSR, Incorporated; that in a letter dated January 22, 1959, Fredericksburg Broadcasting Corporation requested that action be withheld on its proposal because it will be amended to a different frequency; and that, therefore, we believe the said request should be granted and the instant proposals should be designated for hearing without delay; and

It further appearing that the Commission, after consideration of the above, is of the opinion that a hearing on the applications of The Farmville Broadcasting Company and WYSR, Incorporated, is necessary;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues;

1. To determine the areas and populations which would receive primary service from the proposed operation of The Farmville Broadcasting Company and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WYSR and the availability of other primary service to such areas and populations.

3. To determine whether the proposed operation of Station WYSR would cause objectionable interference to Stations WCDJ, Edenton, North Carolina, and WCNC, Elizabeth City, North Carolina; or any other existing standard broadcast stations, and, if so, the nature and extent thereof, and the availability of other primary service to such areas and populations.

4. To determine whether the proposed operation of WYSR would be in compliance with § 3.24(b) (7) of the Commission's rules; and if compliance with § 3.24(b) (7) is not achieved, whether circumstances exist which would warrant a waiver of said section of the rules.

5. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposed operations would better provide a fair, efficient and equitable distribution of radio service.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the instant applications should be granted.

It is further ordered, That Colonial Broadcasting Company and Albemarle Broadcasting Co., licensees of Stations WCDJ and WCNC, respectively, are made parties to the proceeding; and

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the issues in this proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue: "To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated."

Released: February 25, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59–1781; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket Nos. 12775, 12776; FCC 59M–251]

FARMVILLE BROADCASTING CO. AND WYSR, INC. (WYSR)

Order Scheduling Hearing

In re applications of James H. Mayo and R. E. Mayo, d/b as the Farmville Broadcasting Company, Farmville, North Carolina, Docket No. 12775, File No. BP–11530; WYSR, Incorporated (WYSR), Franklin, Virginia, Docket No. 12776, File No. BP–12323; for construction permits.

It is ordered, This 20th day of February 1959, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on April 20, 1959, in Washington, D.C.

Released: February 25, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59–1782; Filed, Feb. 27, 1959; 8:49 a.m.]

[Docket No. 12777; FCC 59–128]

SEASIDE BROADCASTING CO. (KSRG) AND SEATTLE, PORTLAND AND SPOKANE RADIO (KXL)

Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In re applications of Ronald L. Rule, John P. Gillis and James L. Dennon d/b as Seaside Broadcasting Company (KSRG), Seaside, Oregon, Docket No. 12777, File No. BP–11200; Essex Produc-

tions, Inc., and Dena Pictures, Incorporated, a joint venture, d/b as Seattle, Portland and Spokane Radio (KXL), Portland, Oregon, File No. B5-P-5325; for construction permits.

1. The Commission has before it a "Protest and Petition for Reconsideration" filed on January 22, 1959, by Essex Productions, Inc., and Dena Pictures, Incorporated, a joint venture, d/b as Seattle, Portland and Spokane Radio (KXL, hereinafter), licensee of Station KXL, Portland, Oregon, in which KXL, (1) pursuant to section 405 of the Communications Act of 1934, as amended, petitions for reconsideration of the Commission's action of December 23, 1958 in withholding further action on KXL's above-captioned application for a construction permit to increase power from 10 to 50 kw. (and make associated changes) pending conclusion of the proceedings in Docket No. 6741 in the "Clear Channel" matter; and (2) pursuant to sections 309(c) and 405 of said Act, protests, and petitions for reconsideration of, the Commission's action of December 23, 1958, in granting without hearing the above-captioned application of Seaside Broadcasting Company (Seaside, hereinafter) for a construction permit for a new standard broadcast station at Seaside, Oregon, to operate on 730 kilocycles with a power of 500 watts, daytime only;

2. KXL here requests the Commission (a) to reconsider and reverse its said action of December 23, 1958, in deferring further action on KXL's application and to grant the application forthwith; and (b) in the alternative, to (1) designate the Seaside application for hearing on the issues specified by KXL together with such further issues as may be prescribed by the Commission on its own motion, (2) place the burden of proof as to such issues on Seaside, (3) name KXL a party to the proceeding and (4) postpone the effective date of its said grant of December 23, 1958, to the effective date of the Commission's decision after such proceeding.

3. On December 23, 1958, the Commission granted the above-captioned application of Seaside and adopted a letter to KXL in which it was advised that interference from the Seaside proposal to the KXL proposal would be de minimis and not prejudicial to a grant of the KXL proposal; and that, because KXL proposes increased power on 750 kc., a Class I-A frequency, further action must be withheld in light of the Commission's Further Notice of Proposed Rule Making of April 15, 1958, Docket No. 6741, 1 Pike and Fischer RR, 53:xlix, 24 F.C.C. Reports 303, in which the Commission announced that consideration of the possible advantages and disadvantages of authorizing higher power on twelve clear channels (including 750 kilocycles) is being deferred, and that the Commission has decided to maintain the status quo on said twelve frequencies until a later date.

4. KXL claims that, as the licensee of an existing station in Portland, Oregon, it is a "party in interest", and "person aggrieved or whose interests are adversely affected" by the Seaside grant in question, within the meaning of sections 309(c) and 405, respectively, of the Communications Act of 1934, as amended, to have standing to file its instant pleading pursuant thereto. This claim is based on allegations that KXL has a substantial group of regular listeners in the area between Seaside and Portland, in Seaside itself, and beyond Seaside as far north as Astoria, Oregon; that KXL, in its campaign to sell advertising, capitalizes on these listeners and on its ability to serve Portland residents visiting Seaside. Submitted with the KXL pleading is an affidavit in which the vice president of the agency which sells national advertising on KXL states that "mail responses specifically show that KXL has listeners in Seaside, Oregon"; "that advertisers have in the past purchased time on KXL for the express purpose of reaching, among others, residents of the Astoria region"; and "that any impairment of KXL's present wide coverage area would adversely affect KXL's present ability to compete for advertising revenues with higher powered stations in Portland". KXL contends that interference caused by the Seaside proposal to the existing operation of KXL in the said area would cause KXL economic injury. Metropolitan Television Company v. F.C.C., 12 Pike & Fischer RR 2001; In re Fall River Broadcasting Corporation (KOBH), FCC 58-611, Mimeo No., 59743.

5. In support of its contention that the Seaside grant was improperly made or would otherwise not be in the public interest, KXL claims that Seaside has failed to demonstrate that it is financially qualified to construct, own and operate a broadcast station and has not made a showing that its proposed programming and personnel policies will enable it to provide a reliable and satisfactory broadcast service to the areas and populations within its coverage area.

6. KXL states, in substance, that Seaside is not financially qualified for the reasons that no partnership balance sheet was submitted with the application; that the funds available to the individual partners have been exaggerated and the costs of construction and initial operation of the proposed station have been underestimated; that equipment costs have increased since the original filing of the application and such costs may increase more; that there is no building on the proposed transmitter site and, therefore, there is no basis for a finding that the applicant can effectuate its proposal to lease a studio-transmitter building; that no allowance has been made for the first year's costs, engineering and legal fees; that the amount allocated for office equipment and miscellaneous items is insufficient; that the same funds have been committed by the two partners for the purchase of their interests in Station KUIK, Hillsboro, Oregon, which was approved by the Commission on October 22, 1958 (BAL-3179); and that the commitments of Dennon and Gillis to furnish $5,000 for the purchase of KUIK have depleted the funds of Dennon and Gillis which were proposed to meet the commitments to finance the station at Seaside.

7. KXL alleges that "personnel deficiencies call for an inquiry as to whether the proposed operation (at Seaside) will be able to serve the needs and interests of (Seaside's) coverage area" because it is proposed that Gillis and Dennon will be station manager and chief engineer, respectively, and these parties are also proposed as station manager and chief engineer of KUIK located more than 50 miles distant from Seaside; that "it would be absurd to suppose that Messrs. Gillis and Dennon can effectively function as key executives of both stations"; that the distribution of staff functions is unrealistic; that no adequate sales personnel is proposed; and that the applicant has failed to "specify its total proposed staff."

8. KXL contends that the program showing by Seaside "is highly suspect", "incapable of execution" and "cannot be credited with being in the public interest"; that the program proposal "is unsuited, on its face, to serving the needs of the community involved"; that the proposed program schedule of Seaside for Monday through Friday is identical with the program schedule submitted by KUIK Broadcasters and that the proposed schedules for Saturday and Sunday are so similar as to be nearly identical; that the program proposal "must have been regarded as nothing but a stereotyped or 'stock' proposal, bearing no particular relationship to any individual market or community"; "that the Commission erred in failing to compare the Hillsboro and Seaside program proposals in connection with its consideration of the subject application"; that, while the two program schedules for Hillsboro and Seaside are practically identical, the analysis thereof in the Hillsboro and Seaside applications differ substantially; that there are serious discrepancies in the Seaside program analysis; and that the matters alleged with respect to the program proposal raise serious public interest questions.

9. KXL specifies five issues on which it requests an opportunity to present evidence at a hearing. The issues as set forth in Seaside's protest and petition look toward determination of Seaside's financial qualifications, the type and character of its program proposals and whether such proposal would meet the needs of the areas and populations to be served, whether the proposed staff will be adequate to fulfill the program plans and render a satisfactory service and whether Seaside will be able to effectuate its overall proposal, and whether a grant of the Seaside proposal would serve the public interest. These issues, with editorial changes and consolidation, are adopted below.

10. KXL claims that the effective date of the Seaside grant should be postponed until after a decision in a hearing on the Seaside application. In support thereof, KXL states that, while no other station is licensed to serve Seaside, there are two standard broadcast stations in Astoria, Oregon, 15 miles away, one of which has an auxiliary studio in Seaside; that the Seaside proposal would not serve local needs and interests; that KXL would suffer irreparable injury by operation of the Seaside proposal; and that the "like-

lihood is strong that the proposal will be set aside."

11. Pursuant to section 405 of the Communications Act of 1934, as amended, KXL requests the Commission to reconsider its action of December 23, 1958 in withholding further action on the above-described KXL proposal. KXL urges that the overriding nature of the equities requires a grant of the KXL application because the application has been held without action for a period of over twelve years pending the conclusion of the Clear Channel proceeding (Docket No. 6741); the Commission advised KXL by letter dated June 5, 1958, that, in view of the present provisions of § 1.351 of the rules of the Commission, it appeared that the Commission might then proceed to consider the KXL proposal and requested amendments reflecting current data prepared pursuant to the present Rules; thereafter KXL filed amendments which were prepared at substantial cost in money and time of KXL's management, staff and engineering consultants; but that subsequently, the Commission, without having accorded the parties an opportunity to be heard, granted the Seaside application on December 23, 1958, and advised KXL that its proposal must be considered in the light of the Commission's Further Notice of Proposed Rule Making of April 15, 1958, Docket No. 6741, in which the Commission announced that it would maintain the status quo on 750 kilocycles and eleven other Class I–A frequencies. KXL further urges that, under these circumstances, the history of the matter as well as the equities of the situation call for reconsideration by the Commission of the unconditional grant of the Seaside application and the indeterminate stay of the processing of the KXL application for the reasons that the Commission's actions overlook basic considerations of fairness between the parties; that the KXL application may be granted without prejudicing the Commission's future freedom of action in the Clear Channel case; that the KXL proposal will not increase radiation toward the service area of Station WSB, Atlanta, Georgia, the dominant Class I station on 750 kilocycles; that WSB has interposed no objection to a grant of the KXL application; and that, even if a grant of KXL's application would appear to be within the prohibitions of the Commission's April 15, 1958 policy determination, the overriding nature of KXL's equities requires a grant under the instant circumstances.

12. KXL claims that, because of the interference to its proposal from the Seaside proposal, KXL is entitled to a comparative hearing, Ashbacker Radio Corporation v. F.C.C., 326 U.S. 327; Northwestern Airlines v. C.A.B., 194 F2d, 339; even though the interference may be de minimis, In re Tomah-Mauston Broadcasting Company, Inc. (WTMB), 17 Pike and Fischer RR 1119. KXL also claims that the Seaside grant is prejudicial to a grant of its proposal because Seaside, as an existing operation, could protest a grant of the KXL application.

13. Inasmuch as KXL has alleged facts indicating that it has listeners beyond its 0.5 mv/m contour in Seaside and Astoria Oregon; that advertising is sold on the basis of coverage of those areas by the existing operation of KXL; that KXL's national sales representative places advertising on the station on the strength of the additional coverage as shown in the affidavit of an officer of the national sales representative, and that the proposed Seaside operation would result in economic injury to KXL, we find that KXL's showing is sufficient to establish that it is a "party in interest" and a "person aggrieved" within the meaning of sections 309(c) and 405, respectively, of the Communications Act of 1934, as amended, so as to have standing to file its instant pleading protesting and asking reconsideration of the grant of the Seaside application.

14. We also find that KXL has stated with particularity the facts relied upon as showing that the grant was improperly made or would not otherwise be in the public interest. Moreover, we believe that the facts alleged by KXL raise substantial questions as to Seaside's financial qualifications and programing and staffing proposals which require further examination before it is finally determined that a grant of the Seaside application would serve the public interest. Since the grounds advanced by KXL as evidencing that the grant was improperly made are to a great extent supported by material on file with the Commission in applications filed by Seaside and principals of Seaside, and since Seaside has filed no response to the KXL pleading, we believe that, in this case, the public interest would be better served by granting KXL's petition for reconsideration under section 405, vacating the grant, and designating the Seaside application for hearing upon specified issues, with the burden of proof upon the applicant. Under these circumstances it will serve no useful purpose to consider KXL's pleading as a protest under section 309(c) and, therefore, the protest will be dismissed as moot.

15. One other matter relating to the qualifications of Seaside must be discussed. It has been indicated (paragraph No. 6, supra), that on October 22, 1958, the Commission approved the assignment of license for Station KUIK, Hillsboro, Oregon, to a partnership composed of John P. Gillis, James L. Dennon (two of the three partners in Seaside) and two other individuals. On February 13, 1959, KXL filed a "Supplement to Protest and Petition for Reconsideration", pointing out that on January 20, 1959, an application (BAL–3314) was filed with the Commission requesting approval of the assignment of license for KUIK to a new partnership in which Gillis and Dennon hold an interest. In said supplemental pleading, it is alleged, inter alia, that the application (BAL–3314) indicates on its face that Gillis and Dennon have participated in an assignment of license for Station KUIK without prior Commission consent in contravention of the provisions of section 310(b) of the Communications Act. While the alleged violation of section 310(b) may not be so clearly indicated as KXL claims, we believe that the circumstances of the assignment should be explored in the hearing herein ordered. Accordingly an appropriate issue is being included to determine the facts relating to this matter.

16. We now consider KXL's pleading insofar as it requests reconsideration of our action in withholding action on the application to increase the power of KXL to 50 kilowatts pending the outcome of the Clear Channel Proceeding, Docket No. 6741. KXL claims that, because of interference to its proposal from the Seaside proposal, its application is entitled to comparative consideration with the Seaside application, and that, in any event, it is entitled to consideration and grant without reference to the Clear Channel Proceeding. We are of the opinion that KXL is not entitled as a matter of right to a comparative hearing with the Seaside application. It has been determined that interference from the Seaside proposal to the KXL proposal may occur in a small area just outside the city limits of Seaside and is de minimis. We are of the opinion that the de minimis interference would not be prejudicial in the event the KXL application were considered for a grant at a later date. In this respect, it is noted that KXL did not ask for an interference issue in the hearing which it seeks. While it is necessary to consider in a comparative hearing two applications which are mutually exclusive in the sense that if one is granted, the other cannot be granted (Ashbacker Radio Corporation v. FCC, supra), that rule is not applicable here. Bluff City Broadcasting Co. (WDIA), 9 Pike and Fischer RR 208. There is a material distinction between the instant matter and facts presented in the Tomah-Mauston Broadcasting Company, Inc. (WTMB) case, for there, the proposal which was designated for hearing on a section 309(c) protest apparently involved a modification of the license of an existing station rather than, as here, a slight conflict with a co-pending application.

17. With respect to KXL's claim that its application should be granted without reference to the Clear Channel Proceeding, it is obvious that this claim must be examined in the light of overall policy considerations as well as the circumstances set forth by KXL (see paragraph No. 11, supra). More time is required for consideration of this aspect of the KXL petition, and we are temporarily deferring our decision in this matter.

18. In view of the foregoing: *It is ordered*, That, pursuant to section 405 of the Communications Act of 1934, as amended, KXL's Petition for Reconsideration, as directed to the Commission's grant of the above-captioned Seaside application, is granted; that the Seaside grant is vacated; and that the above-captioned application of the Seaside Broadcasting Company is designated for evidentiary hearing at the offices of

the Commission in Washington, D.C., upon the following issues:

1. To determine whether Seaside Broadcasting Company is financially qualified to construct and operate its proposed station.

2. To determine whether the proposed programming service of Seaside Broadcasting Company would serve the public interest.

3. To determine whether Seaside Broadcasting Company has a reasonable expectation of implementing its programming proposals in light of its staffing plans and the availability of program sources.

4. To determine whether John P. Gillis or James L. Dennon have participated in an assignment of the license for Station KUIK, Hillsboro, Oregon, in contravention of section 310(b) of the Communications Act, and, if so, whether such conduct adversely affects the qualifications of Seaside Broadcasting Company to become a licensee of this Commission.

5. To determine, in view of the evidence adduced pursuant to the foregoing issues, whether a grant of the application of Seaside Broadcasting Company would serve the public interest, convenience, and necessity.

19. *It is further ordered,* That the burden of proceeding with the introduction of evidence and the burden of proof as to each of the issues shall be on the Seaside Broadcasting Company.

20. *It is further ordered,* That KXL is made a party to the proceeding herein and that:

(a) The appearances by the parties intending to participate in the above hearing shall be filed not later than March 4, 1959.

(b) The hearing on the above issues is to commence at a time and place and before an Examiner to be specified in a subsequent order.

(c) The parties to the proceeding herein shall have fifteen (15) days after the issuance of the Examiner's decision to file exceptions thereto and seven (7) days thereafter to file replies to any such exceptions.

21. *It is further ordered,* That the protest of KXL, filed pursuant to section 309(c) of the Communications Act, is dismissed as moot.

22. *It is further ordered,* That KXL's instant petition for reconsideration pursuant to section 405 of the Communications Act of 1934, as amended, which is directed to the Commission's action of December 23, 1958, and requests immediate consideration and grant of its above-described application to increase the power of Station KXL to 50 kilowatts is deferred.

Adopted: February 18, 1959.

Released: February 25, 1959.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 59-1783; Filed, Feb. 27, 1959; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-16083]

PHILLIPS PETROLEUM CO.

Order Permitting Change in Rate Due to Reduction in Louisiana Gathering Tax and Decrease in Louisiana Severance Tax, and Allowing Changed Rate to Become Effective

FEBRUARY 20, 1959.

The Commission, on August 27, 1958, issued an order for hearing and suspending proposed change in rates in this proceeding. The order suspended Supplement No. 11 to Phillips Petroleum Company's FPC Gas Rate Schedule No. 219 until February 1, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

On January 15, 1959, Phillips Petroleum Company (Phillips) tendered a filing herein designated Supplement No. 13 to its FPC Gas Rate Schedule No. 219 to amend Phillips' Supplement No. 11 to reflect the reimbursement of the increase in the Louisiana gas severance tax and the decrease of the Louisiana gas gathering tax, both effective as of December 1, 1958.

Inasmuch as the proposed change relates only to the tax adjustment provisions of Phillips' rates, it in no way affects the rate suspension proceeding involved in Docket No. G-16083.

Phillips has requested by motion that Supplement No. 11 to its FPC Gas Rate Schedule No. 219 be allowed to become effective as of February 1, 1959.

The Commission finds:

(1) It is appropriate and in the public interest that Supplement No. 13 to Phillips' FPC Gas Rate Schedule No. 219 be permitted to be filed.

(2) Good cause has been shown that the 30-day notice requirement provided in the Commission's Regulations under the Natural Gas Act be waived with respect to the afore-mentioned supplement; and as it amends Supplement No. 11 to the same Phillips' rate schedule, it be allowed to become effective upon the filing of an undertaking as hereinafter ordered and conditioned.

(3) The change in rates hereby permitted to become effective in no way modifies, amends, or changes the rate suspension proceeding involved in Docket No. G-16083.

The Commission orders:

(A) The 30-day notice requirement provided in the Commission's regulations under the Natural Gas Act hereby is waived with respect to the afore-mentioned supplement.

(B) Upon execution by Phillips of the agreement and undertaking described in paragraph (D) below and acceptance thereof, evidenced by a letter addressed to Phillips by the Secretary of the Commission, the rates, charges and classifications set forth in Supplement No. 11, as amended by Supplement No. 13, to Phillips' FPC Gas Rate Schedule No. 219 shall be effective as of February 1, 1959, subject to further orders of the Commission in this proceeding: *Provided, however,* That the change in rates hereby permitted to become effective in no way modifies, amends, or changes the rate suspension proceeding involved in Docket No. G-16083.

(C) Phillips shall refund at such times and in such amounts to the persons entitled thereto, and in such manner as may be required by final order of the Commission, the portion of the increased rates found by the Commission in this proceeding not justified, together with interest thereon at the rate of six percent per annum from the date of payment to Phillips until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the increased rates or charges allowed by this order to become effective, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report (original and one (1) copy), in writing and under oath, to the Commission monthly, or quarterly if Phillips so elects, for each billing period, and for each purchaser, the billing determinants of natural gas sales to such purchasers and the revenues resulting therefrom, as computed under the rates in effect immediately prior to the date upon which the increased rates allowed by this order become effective, and under the rates allowed by this order to become effective, together with the differences in the revenues so computed.

(D) As a condition of this order, within 15 days from the date of issuance thereof, Phillips shall execute and file in triplicate with the Secretary of this Commission its written agreement and undertaking to comply with the terms of paragraph (C) hereof, signed by a responsible officer thereof and evidenced by proper authority from the Board of Directors, as follows:

Agreement and Undertaking of Phillips Petroleum Company To Comply With the Terms and Conditions of Paragraph (C) of Federal Power Commission's Order Making Effective Proposed Rate Changes

In conformity with the requirements of the order issued (date), in Docket No. G-16083, Phillips Petroleum Company hereby agrees and undertakes to comply with the terms and conditions of paragraph (C) of said order, and has caused this agreement and undertaking to be executed and sealed in its name by its officers, thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this ------ day of ----------, 1959.

PHILLIPS PETROLEUM COMPANY
By ----------
Attest:

As a further condition of this order, Phillips shall file with said agreement and undertaking a certificate showing service of copies thereof upon all purchasers under the rate schedule involved.

(E) If Phillips shall, in conformity with the terms and conditions of paragraph (C) of this order, make the refunds as may be required by order of the Commission, the undertaking shall

be discharged; otherwise, it shall remain in full force and effect.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1744; Filed, Feb. 27, 1959; 8:45 a.m.]

[Docket No. G-16712]

PHILLIPS PETROLEUM CO.

Order for Hearing and Suspending Proposed Changes in Rates

FEBRUARY 20, 1959.

Phillips Petroleum Company (Phillips) on January 26, 1959, tendered the following designated filing proposing tax changes to its previously submitted rate increase:

Description: Notice of Change January 23, 1959.
Purchaser: United Fuel Gas Company.
Rate schedule designation: Supplement No. 9 to Phillips' FPC Gas Rate Schedule No. 273.

In its filings, Phillips requested that Supplement No. 7 to its FPC Gas Rate Schedule No. 273 be amended to reflect the tax reimbursement resulting from the suspension of the Louisiana gas gathering tax and the increase in the Louisiana gas severance tax as set forth in said Supplement No. 9. The Commission in its order issued October 24, 1958, suspended Supplement No. 7 until April 1, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

The Commission finds:

(1) It is necessary and in the public interest that the afore-mentioned supplement be permitted to be filed.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 9 to Phillips' FPC Gas Rate Schedule No. 273 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The aforementioned supplement is hereby permitted to be filed.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed rate and charge contained in Supplement No. 9 to Phillips' FPC Gas Rate Schedule No. 273.

(C) Pending such hearing and decision thereon, said Supplement No. 9 is suspended and the use thereof deferred until April 1, 1959, or until the date upon which Supplement No. 7 to Phillips' FPC Gas Rate Schedule No. 273 is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(E) The issuance of the order shall constitute full notice of the filing and publication of the proposed change in rate insofar as its effective date is concerned.

(F) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1745; Filed, Feb. 27, 1959; 8:45 a.m.]

[Docket No. G-17876]

BAYVIEW OIL CORP. ET AL.

Order for Hearing and Suspending Proposed Change in Rate

FEBRUARY 20, 1959.

Bayview Oil Corporation (Operator) et al. (Bayview) on January 23, 1959, tendered for filing a proposed change in its presently effective rate[1] schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated January 21, 1959.
Purchaser: Mississippi River Fuel Corporation.
Rate schedule designation: Supplement No. 7 to Bayview's FPC Gas Rate Schedule No. 6.
Effective date: February 25, 1959 (stated effective date is that proposed by Bayview).

In support of the proposed periodic increased rate, Bayview states that the contract was negotiated at arm's length and that the proposed rate is just and reasonable. In addition, Bayview refers to the cost of service data that was submitted in the proceedings in Docket Nos. G-13739 et al., in which the hearings have been concluded and the Examiner's decision is pending.

The increased rate and charge so proposed have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 7 to Bayview's FPC Gas Rate Schedule No. 6 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 7 to Bayview's FPC Gas Rate Schedule No. 6.

(B) Pending such hearing and decision thereon, said supplement be and it hereby is suspended and the use thereof deferred until July 25, 1959, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1746; Filed, Feb. 27, 1959; 8:45 a.m.]

[1] Present effective rate in effect subject to refund in Docket No. G-13739.

[Docket No. G-14829 etc.]

TEXAS ILLINOIS NATURAL GAS PIPELINE CO. ET AL.

Notice of Applications, Consolidation and Date of Hearing

FEBRUARY 20, 1959.

In the matters of Texas Illinois Natural Gas Pipeline Company, Docket Nos. G-14829, G-17094; Shell Oil Company, Docket No. G-16766; Horace C. Hargrave et al., Docket Nos. G-17035, G-17036; South Texas Natural Gas Gathering Company, Docket No. G-17050; Sunray Mid-Continent Oil Company, Docket No. G-17051; Union Producing Company, Docket No. G-17087; Roy H. Bettis and G. Frederick Shepherd, Docket No. G-17091.

Take notice that applications for certificates of public convenience and necessity have been filed in the above-captioned proceedings, pursuant to section 7(c) of the Natural Gas Act, authorizing the applicants to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications which are on file with the Commission and open for public inspection.

Texas Illinois Natural Gas Pipeline Company (Texas Illinois), a Delaware corporation with principal place of business at 122 South Michigan Avenue, Chicago 3, Illinois, filed its application for a certificate in Docket No. G-14829 on April 7, 1958, as amended April 22, July 7, November 26, and December 12, 1958, seeking authority to install additional compressor horsepower on its system. Specifically, Texas Illinois proposes to construct and operate one ad-

ditional engine of 2,000 h.p. at each of its existing Compressor Stations Nos. 303, 304, 305, 306, 307, 308, 309 and 311 constituting a total of 16,000 additional horsepower. The estimated total cost of these facilities is $3,915,000 which will be financed by Texas Illinois through the use of short-term bank loan credit. It is estimated that these facilities can be placed in operation within 6 months from the date of beginning construction. These facilities will be used for the purpose of increasing Texas Illinois' authorized peak-day sales capacity by 20,000 Mcf or from a total of 504,000 Mcf to a total of 524,000 Mcf. This additional system capacity will be available at any point on Texas Illinois' system in market areas now served by it and will be used to deliver additional volumes of gas to its existing customers in meeting their increased gas requirements. Texas Illinois states it has entered into various agreements for the purchase of additional volumes of gas.

By application filed on November 26, 1958, in Docket No. G–17094, Texas Illinois seeks a second certificate authorizing it to construct approximately 10 miles of 8-inch pipeline extending in a southeasterly direction from the North Rincon Field, Starr County, Texas, to a point of connection in Javelina Field, Hidalgo County, Texas, with the facilities proposed to be constructed and operated by South Texas Natural Gas Gathering Company (South Texas) in Docket No. G–17050 as later described herein. Texas Illinois also proposes to construct four purchase meter stations. One of these meters will be located in the North Rincon Field, two in the Javelina Field, and one in the Arkansas City Area (field), Starr County, Texas which is located approximately 5.7 miles northeast of the North Rincon Field. The estimated total cost of these facilities is $234,700 which will be financed by Texas Illinois out of current funds. These facilities will be operated by South Texas in conjunction with its proposed G–17050 facilities pursuant to an agreement between Texas Illinois and South Texas, dated November 1, 1958, providing, inter alia, for the gathering by South Texas of gas purchased by Texas Illinois from Shell Oil Company in the North Rincon, Javelina and Arkansas City Fields under contract dated August 15, 1958, and the delivery thereof to Texas Illinois at its existing meter station in the La Gloria Area, Jim Wells and Brook Counties, Texas. This proposal is a part of the proposal next described herein and will make available to Texas Illinois up to an average of an additional 30,000 Mcf per day.

South Texas Natural Gas Company (South Texas), a Texas corporation with principal place of business at 110 Oil Industries Building, Corpus Christi, Texas, filed its application for a certificate in Docket No. G–17050 on November 26, 1958, as amended December 9, 1958. South Texas seeks authorization (1) to operate the proposed facilities in Docket No. G–17094 for the gathering and delivery of Texas Illinois gas as aforesaid and (2) to sell natural gas in interstate commerce to Texas Illinois for resale as tabulated below. This proposal contemplates the construction and operation of approximately 108 miles of pipeline and appurtenant facilities of which approximately 58 miles are required to transport Texas Illinois gas commingled with South Texas gas. The estimated total cost of these facilities is $4,297,694 which will be financed by South Texas out of the proceeds received, from time to time, through the sale of common stock and notes to its parent, Coastal States Gas Producing Company (Coastal). South Texas is or will be a wholly owned subsidiary of Coastal. South Texas will receive and meter Texas Illinois gas at or near the Javelina Field at pressures not to exceed 980 psig and transport same at 1.5 cents per Mcf at 14.65 psia for redelivery to Texas Illinois at its meter station in the La Gloria Area.

The remaining applicants in the above-captioned proceedings filed separate applications for certificates as tabulated below seeking authorization to sell natural gas in interstate commerce from production of certain units, leases, or acreage to the purchasers indicated for resale.

Docket No.	Date filed	Applicant and address	Source of gas, date of contract, and initial price of gas in Mcf at 14.65 psia	Purchaser
G–16766	Oct. 24, 1958	Shell Oil Co., 50 W. 50th St., New York 20, N.Y.	Down to top of Jackson Sand, Javelina, Arkansas City and North Rincon Fields, Hidalgo and Starr Counties, Tex.; Aug. 15, 1958, Sept. 19, 1958; 18.0 cents.	Texas Illinois Natural Gas Pipeline Co.
G–17035	Nov. 21, 1958	Horace C. Hargrave, Suite 432, Meadows Bldg., Dallas, Tex., for himself and as operator for others.	North Monte Christo Field, Hidalgo County, Tex.; Aug. 1, 1958; 14.5 cents.	South Texas Natural Gas Gathering Co., as assignee of Coastal States Gas Producing Co., by instrument dated Oct. 1, 1958.
G–17036	do	do	do	Do.
G–17050	Nov. 26, 1958	South Texas Natural Gas Gathering Co., 110 Oil Industries Bldg., Corpus Christi, Tex.	North Monte Christo and Shepherd Fields, Hidalgo County, Tex.; Nov. 1, 1958; 19.5 cents.	Texas Illinois Natural Gas Pipeline Co.
G–17051	do	Sunray Mid-Continent Oil Co., P. O. Box 2039, Tulsa, Okla.	North Monte Christo Field, Hidalgo County Tex.; Sept. 2, 1958; 15.0 cents.	South Texas Natural Gas Gathering Co.
G–17087	do	Union Producing Co., 1525 Fairfield Ave., Shreveport, La.	Shepherd Field, Hidalgo County, Tex.; Nov. 1, 1958, 16.0 cents.	Do.
G–17091	do	Roy H. Bettis and G. Frederick Shepherd, 608 Gulf States Bldg., Dallas, Tex.	Shepherd Field, Hidalgo County, Tex.; Oct. 1, 1958; Nov. 1, 1958; 15.0 cents.	Do.

In Docket No. G–17051, Sunray seeks a certificate authorizing the sale described above "only for the term of said contract so that Applicant is authorized to make said sale of gas only for the term of the contract."

These matters should be heard on a consolidated record.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 31, 1959, at 10:00 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before March 18, 1959.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 59–1747; Filed, Feb. 27, 1959; 8:45 a.m.]

[Docket No. G–14638]

CARTER OIL CO.

Notice of Application and Date of Hearing

FEBRUARY 19, 1959.

Take notice that The Carter Oil Company (Applicant), a West Virginia corporation with its principal place of business in Tulsa, Oklahoma, filed an application on March 7, 1958, in Docket No. G–14638, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Natural Gas Pipeline Company of America (Natural), of the portion of its portion of the gas produced from or attributable to acreage in section 17, Township 2 North, Range 20 ECM, Beaver County, Oklahoma, part of the Trimmel Unit "A" operated by Edwin L. Cox for resale subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission, and open for public inspection.

Applicant proposes to sell its share of said natural gas to Natural under the terms of a gas purchase agreement dated January 2, 1958, as supplemented and amended, between Applicant and others, as Seller, and Natural, as Buyer, filed concurrently with the application as Carter's Rate Schedule No. 58.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 25, 1959, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and

the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before March 14, 1959. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 59-1748; Filed, Feb. 27, 1959; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 90]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 25, 1959.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 61713. By order of February 17, 1959, the Transfer Board approved the transfer to Hilldrup Transfer & Storage Co., Inc., Fredericksburg, Va., of Certificate in No. MC 61803, issued December 5, 1950, to C. B. McDaniel, doing business as Hilldrup Transfer, Fredericksburg, Va., authorizing the transportation of: *Antique furniture,* from Baltimore, Md., to Fredericksburg, Va., *Heavy machinery,* between specified points in Virginia, on the one hand, and, on the other, Washington, D.C., and specified points in Maryland; and *Household goods,* between Fredericksburg, Va., and points in Virginia within 100 miles of Fredericksburg, on the one hand, and, on the other, points in Maryland and the District of Columbia. Willis & Garnett, Law Building, Fredericksburg, Va., for applicants.

No. MC-FC 61780. By order of February 17, 1959, the Transfer Board approved the transfer to Scenic Hawkeye Stages, Inc., 111 Riverview Drive, Decorah, Iowa, of Certificate in No. MC 58440, Sub 1, issued August 12, 1954, to Lawrence Tjossem, doing business as Scenic Hawkeye Stages, 111 Riverview Drive, Decorah, Iowa, authorizing the transportation of: Passengers and their baggage and express, newspapers, and mail, in the same vehicle with passengers, between Waterloo, Iowa, and Spring Valley, Minn. and between Davis Corners, Iowa and La Crosse, Wis.

No. MC-FC 61835. By order of February 17, 1959, the Transfer Board approved the transfer to Bauman's Inc., Attleboro, Mass., of the operating rights in Permit No. MC 49017, issued by the Commission, August 31, 1949, to Robert E. Bauman, doing business as Bauman's Delivery Service, authorizing the transportation, over irregular routes, of such commodities as are dealt in by retail furniture and department stores, between Pawtucket, R.I., on the one hand, and, on the other, points in that part of Massachusetts on and east of U.S. Highway 5.

No. MC-FC 61889. By order of February 19, 1959, the Transfer Board approved the transfer to Westcott, Inc., North Amherst, Mass., of Certificate No. MC 63667, issued May 11, 1949, in the name of John S. Westcott and George H. Westcott, a partnership, doing business as John S. Westcott & Son, North Amherst, Mass., authorizing the transportation of general commodities excluding household goods, commodities in bulk, and other specified commodities, over a regular route, between Sunderland, Mass., and Springfield, Mass.; and household goods, over irregular routes, between Amherst, Mass., and points in Massachusetts within 25 miles of Amherst, on the one hand, and, on the other, points in New Hampshire, Vermont, Maine, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and the District of Columbia; athletic equipment, between Amherst, Mass., on the one hand, and, on the other, points in New Hampshire, Vermont, Connecticut, and New York; and livestock, between Amherst, Mass., on the one hand, and, on the other, points in New Hampshire, Vermont, Maine, Connecticut, and New York. Bruce G. Brown, 37 South Pleasant Street, Amherst, Mass., for applicants.

No. MC-FC 61897. By order of February 17, 1959, the Transfer Board approved the transfer to Dobbie Transportation Co., Inc., Elizabeth, New Jersey, of that portion of the operating rights in Certificate No. MC 60229, issued October 25, 1956, to Feraco, Inc., authorizing the transportation of building and construction materials, and supplies, in bulk, in tank vehicles, over irregular routes, between points in New Jersey, Delaware, and the District of Columbia, and a described portion of Pennsylvania and Maryland. A. David Millner, 1060 Broad Street, Newark 2, New Jersey, and Jacob Polin, Box 317, Bala-Cynwyd, Pennsylvania, for applicants.

No. MC-FC 61925. By order of February 17, 1959, the Transfer Board approved the transfer to Thomas Boyd, Inc., Philadelphia, Pennsylvania, of a certificate in No. MC 42148 issued January 12, 1959, to Thomas Boyd, Philadelphia, Pennsylvania, authorizing the transportation of commodities, the transportation of which, because of size or weight, requires the use of special equipment, and related machinery parts and equipment, when their transportation is incidental to the transportation by the carrier of commodities which by reason of size or weight require special equipment, over irregular routes, between points in New Jersey, Maryland, New York, and points in that part of Pennsylvania east of a line beginning at the New York-Pennsylvania State line near Millerton, Pa., and extending in a southerly direction through Williamsport, Pa., to the Pennsylvania-Maryland State line near West Manheim, Pa. Jacob Polin, 314 Old Lancaster Road, Merion, Pennsylvania (P.O. Box 317, Bala-Cynwyd, Pennsylvania).

No. MC-FC 61944. By order of February 17, 1959, the Transfer Board approved the transfer to Swanson's Waltham Express, Inc., Waltham, Mass., of Certificate No. MC 81834 issued May 5, 1958, to William C. Powers, doing business as Swanson's Waltham Express, Waltham, Mass., authorizing the transportation of general commodities, excluding household goods, commodities in bulk, and other specified commodities, between Everett, Mass., and Weston, Mass., serving the intermediate points of Boston, Watertown, Waltham, and Somerville, Mass., and the off-route points of Chelsea, Brookline, Newton, Cambridge, and Belmont, Mass. Flynn & Flynn, 657 Main Street, Waltham 54, Mass., for applicants.

No. MC-FC 61961. By order of February 18, 1959, the Transfer Board approved the transfer to Apex Trucking Co., Inc., New York, N.Y., of the operating rights in Permit No. MC 117184, issued by the Commission, August 15, 1958, to James Cerchione, doing business as Apex Trucking Co., New York, N.Y., authorizing the transportation, over irregular routes, of such commodities as are dealt in by book and magazine publishing companies, and fixtures, materials, supplies, and equipment used in the operation of such business, between New York, N.Y., and the site of the plant of the McGraw-Hill Publishing Company at or near East Windsor (Hightstown), N.J. William D. Traub, 10 East 40th Street, New York 16, N.Y., for applicants.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 59-1754; Filed, Feb. 27, 1959; 8:46 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

VICTORIA E. WENDEL

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following prop-

erty, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Victoria E. Wendel, individually, and as guardian for her minor son, Ernesto E. Wendel, 72-33 61st Street, Barranquilla, Colombia, S.A.; Claim No. 66561; $337.98 in the Treasury of the United States. Vesting Order No. 9068.

Executed at Washington, D.C., on February 20, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-1760; Filed, Feb. 27, 1959; 8:47 a.m.]

SOPHIE RUHR

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Sophie Ruhr, Schwanenwik 34, Hamburg, Germany; Claim No. 37863. $8,792.50 in the Treasury of the United States. 200 shares of $25.00 par value common capital stock of Eastern Time Table Distributing Co., Inc., Certificate No. 995, presently in the custody of the Federal Reserve Bank, New York, N. Y. Any and all rights, interests and claims to survivor benefits to January 1, 1947, under the Railroad Retirement Act of 1935, as amended (Public Law 399, 74th Cong. 1st Sess., 49 Stat. 967), arising out of the demise of Rudolf Falck, Railroad Retirement Board Reference No. H-47186, together with any and all rights to file for, enforce and collect the same, vested by the Attorney General by Vesting Order No. 18160. Vesting Orders Nos. 14127, 14855, 18160 and 18566.

Executed at Washington, D.C., on February 24, 1959.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 59-1761; Filed, Feb. 27, 1959; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

CHARLES D. MAGDSICK

Report of Appointment and Statement of Financial Interests

Report of appointment and statement of financial interests required by section 710(b)(6) of the Defense Production Act of 1950, as amended.

Report of Appointment

1. Name of appointee: Mr. Charles D. Magdsick.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of appointment: February 16, 1959.
4. Title of position: Consultant.
5. Name of private employer: United States Steel Corporation, Pittsburgh, Pa.

CARLTON HAYWARD,
Director of Personnel.

FEBRUARY 9, 1959.

Statement of Financial Interests

6. Names of any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests; any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

United States Steel Corp.
Bucyrus-Erie Co.
Carrier Corp.
Chesapeake & Ohio Rwy. Co.
Cleveland Trust Co.
Columbia Gas Co.
Cunningham Drug Co.
James R. Dole Engr. Co.
Duquesne Light Co.
Elfun Trusts.
Filtrol.
General Electric Co.
General Motors Corp.
Great Western Sugar Co.
Gulf Oil Corp.
G. C. Murphy Co.
National Dairy Corp.
North American Aviation Corp.
Penn. Power & Light Co.
Pure Oil Co.
Southern Natural Gas Co.
Texas Co.
White Motor Co.
Bank deposits.

Dated: February 17, 1959.

CHARLES D. MAGDSICK.

[F.R. Doc. 59-1755; Filed, Feb. 27, 1959; 8:47 a.m.]

DONALD B. FITZPATRICK

Report of Appointment and Statement of Financial Interests

Report of appointment and statement of financial interests required by section 710(b)(6) of the Defense Production Act of 1950, as amended.

Report of Appointment

1. Name of appointee: Mr. Donald B. Fitzpatrick.
2. Employing agency: Department of Commerce, Business and Defense Services Administration.
3. Date of Appointment: February 16, 1959.
4. Title of position: Consultant.
5. Name of private employer: Allen-Bradley Corporation, 136 West Greenfield, Milwaukee, Wis.

CARLTON HAYWARD,
Director of Personnel.

FEBRUARY 17, 1959.

Statement of Financial Interests

6. Names of any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests; any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

Allen-Bradley Corporation.
Bank deposits.

Dated: February 16, 1959.

DONALD FITZPATRICK.

[F.R. Doc. 59-1756; Filed, Feb. 27, 1959; 8:47 a.m.]

MARVIN S. PLANT

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER:

A. Deletions: No change.
B. Additions: No change.

This statement is made as of February 15, 1959.

Dated: February 16, 1959.

MARVIN S. PLANT.

[F.R. Doc. 59-1757; Filed, Feb. 27, 1959; 8:47 a.m.]

COURTLANDT F. DENNEY

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER:

A. Deletions: No change.
B. Additions: No change.

This statement is made as of February 15, 1959.

Dated: February 17, 1959.

COURTLANDT F. DENNEY.

[F.R. Doc. 59-1758; Filed, Feb. 27, 1959; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—FEBRUARY

A numerical list of the parts of the Code of Federal Regulations affected by documents published to date during February. Proposed rules, as opposed to final actions, are identified as such.